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LEGAL TENDER NOTES IN CALIFORNIA.

THE creation of the United States legal tender notes and their subsequent depreciation brought into circulation in California, as well as in other parts of the country, two kinds of lawful money of different values. Under the conditions of free exchange presupposed in the statement of Gresham's Law, these notes would have supplanted gold and silver; but this was not the result, and it is the purpose of this article to indicate some of the more important steps taken by the people of California in avoiding their use and in holding to a metallic currency.

Prior to the issue of the legal tender notes no paper money had circulated in California. The constitution of the State expressly prohibited the creation and circulation of any instruments of credit as money. This prohibition was contained in Sections 34 and 35 of Article IV., which were as follows: —

> The legislature shall have no power to pass any act granting any charter for banking purposes, but associations may be formed, under

general laws, for the deposit of gold and silver; but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

The legislature of this State shall prohibit by law any person or persons, association, company, or corporation from exercising the privileges of banking or creating paper to circulate as money.

Directed by this law, and influenced by the fact that California had become conspicuous for its extensive production of the precious metals, the people acquired habits and traditions which made them prefer gold and silver to any other form of money. Moreover, for a number of years Californians had enjoyed remarkable prosperity; and they were accustomed to find one of the causes of this prosperity in their possession of a stable medium of exchange. When, therefore, in 1862, the United States issued these notes and made them legal tender wherever the federal authority extended, the people of California found themselves called upon to make an experiment quite off the line of their experience. The States in the central and eastern parts of the country had been long familiar with paper currency, and some of it was of even a more questionable character than the new United States notes. To the people of these States the new notes came as a money of general circulation, supplanting the bills of the old State banks, which circulated within somewhat narrow limits. But to the Californians, who had used only gold and silver, the legal tender notes appeared as an unstable medium, the causes of whose fluctuations they were not able to understand, but which, they clearly saw, threatened to subvert the hitherto stable basis of their commercial transactions.

In the beginning of the discussion of the question raised by the appearance of the legal tender notes in California there were serious doubts as to the constitutionality of the law under which they had been issued; and for

this reason many of the arguments bore directly on this point. There were, undoubtedly, numerous good and valid reasons which the Californians might have urged specifically against the use of legal tender notes in their circumstances. But not all of these reasons found clear and definite statement in the public discussion. If a satisfactory conclusion was reached, it was not through any superior economic insight: it was because the question to be determined was a simple practical problem of business, in which the interests of the dominant part of the community pointed the way to the solution. One of the earliest objections to the use of the legal tender notes which found specific statement was based on the fact that their fluctuations in value depended upon circumstances not within the sphere of the Californian's observation. The variations in their value were indicated by the changes in the price of gold in New York, which could be known in California only by means of the telegraph; and telegraphic news was liable to be subject to monopoly control. With an unstable medium of exchange, with little or no knowledge of the particular causes of its variations in value, and with no way to determine this value except by despatches from New York, the members of the mercantile community had a very unpropitious outlook for their operations. The farmers were also interested in maintaining a metallic currency. Obliged to sell their surplus of grain in England, it was considered to be important for them to have a favorable state of exchange between California and that country. "The farmer," it was said, "under otherwise advantageous circumstances might be disappointed for months in the sale of his grain for exportation on account of the rate of exchange on England." * Under the metallic currency, this rate had been almost uniform for ten years; and the farmers and dealers in grain had had a fairly reliable basis for their calculations.

* *Report of the President of the Chamber of Commerce*, May 10, 1864, p. 17.

Creditors, moreover, saw their interests menaced by the rapid depreciation of one of the kinds of lawful money; and that their fears were not groundless may be seen from the fact that in some instances debtors undertook subsequently to liquidate their obligations by using depreciated notes.* One of the local financiers found an objection to adopting Treasury notes to the exclusion of gold in the expense of sending to the eastern part of the country to purchase them. He held that it would require a long time for the government to send a sufficient supply to serve the needs of currency, and that the people of California ought not to be subject to the expense of shipping gold to New York and bringing back United States notes, since "there would be a loss of from forty to fifty days' interest, together with freight and insurance both ways, amounting to an extraordinary tax on business."† Prophets were not wanting in those days. Nearly every man in the community had a list of evils which would ensue as a consequence of action regarding the legal tender notes: in some cases, the evils would surely follow the

*A sufferer by one of these transactions sets forth his grievance in the *Evening Bulletin*, March 5, 1863, as follows: "About four years ago I loaned $10,000 in gold coin of the United States to John Smith, of Sacramento City, for which said Smith executed to me a note, in the usual form, bearing interest at the rate of one and one-half per cent. per month. This note I placed in the hands of my bankers, D. O. Mills & Co., Sacramento, with instructions to receive and receipt for the interest as it accrued thereon, and also to collect the principal at maturity. In January last Mr. Smith called at the banking house of D. O. Mills & Co., and tendered $10,000 in greenbacks in payment in full of the note executed to me, and knowing that the said notes were not at the time worth more than sixty-eight cents on the dollar. Messrs. Mills and Miller, of the house of Mills & Co., refused to receive the tendered greenbacks without consultation with me, and, moreover, denounced the conduct of Mr. Smith as unfair in the extreme, at the same time reminding him of the fact that he had received the whole amount in gold coin. After a conference more protracted than pleasant, Mr. Smith offered to pay $10,000 in greenbacks and $1,000 in gold coin, which proposition, rather than be a party to a tedious and expensive lawsuit, I assented to. . . . As it is, I am loser to the amount of $2,200, allowing sixty-eight cents on the dollar for greenbacks; and at the rate they are now selling — and I still have them on hand — my loss is about $3,500."

†San Francisco *Evening Bulletin*, March 7, 1863.

acceptance of the notes as the money of the State; in other instances, the disasters were set down to appear only in case the notes were not accepted. Mr. H. H. Haight, later Governor of California, pointed out some of these evils in arguing the case of James Lick *v.* William Faulkner. Action had been brought to recover $450 rent. The defence admitted the debt, but averred a tender of Treasury notes issued under the act of February 25, 1862. Mr. Haight, speaking in behalf of James Lick, took ground against the constitutionality of the Legal Tender Act, and at the same time indicated some of the evils that would result from the introduction of the kind of money contemplated in the act in question. "We all know," he said, "that this legal tender provision, if declared valid, would upheave the very foundations of all business prosperity in California, would substitute distrust for confidence, and encounter the traditional and bitter hostility of the whole population, without any compensating advantage to the federal government. We know that it would do more than all other causes combined to impair the loyalty of our people to the Union and to endanger our domestic tranquillity." *

But the discussion was not entirely one-sided. There were advocates of the use of the Treasury notes, yet they did not make clear the motives which determined their advocacy. They said much of the demands of patriotism and loyalty to the Union, and affirmed that a refusal by the people of the Commonwealth to use the currency which the federal government had issued in its need was about equivalent to secession. They had no better appellation than "secessionists," "abettors of treason," and "traitors" for the merchants of San Francisco who manifested dissatisfaction with the Treasury notes as the currency of the State. It is possible that there was some

* *The Currency Question:* Argument before the Supreme Court of the State of California, p. 99.

connection between the desire of certain persons to have the Treasury notes generally accepted in California and their desire for a new field of speculation. And in their zeal the advocates of the notes frequently ventured to prophesy. A correspondent writing to the *Evening Bulletin*, July 23, 1862, said: —

> They are certainly to become the currency of this State; and, the sooner Californians accept them as such, the better it will be for themselves and the more favorable for the general government. California can do no greater service to the Union, nor show her loyalty in a manner so fitting, as by at once accepting the legal tender notes and making them the basis of her circulating medium. It is folly to persist in the idea that gold shall here be the basis and paper the merchandise.

This writer further asserted that the adoption of the legal tender notes would be a great benefit to the business of California. In the State Treasurer's report, in January, 1863, it was argued that it was not only folly, but *pro tanto* rebellion, for the people of the State to attempt to ostracize the national currency. "We must either adapt ourselves and trade to the currency of our common country, become a homogeneous part of the nation, bearing our share of its burdens and enjoying equally with others the fruition of its maintenance, or adopt the alternative of separation and rebellion."

Those, however, who had important part in the commercial and industrial affairs of the State stood firmly in favor of maintaining a currency of gold and silver. Yet in some instances the notes passed from hand to hand, and were received at par. The California Steam Navigation Company, for example, received the legal tender notes for passage between Sacramento and San Francisco, the price of passage having been fixed at five dollars. But in the course of time it was discovered that brokers were taking advantage of the difference in value between gold and the notes; and, therefore, on the 21st of January, 1863, the company determined that only gold and silver should be received.*

* San Francisco *Daily Herald*, January 22, 1863.

As the notes declined in value, the embarrassment of mercantile firms increased. It became evident, moreover, that their value was not determined, or to any considerable extent modified, by the attitude which the population of California took concerning them. With this discovery the members of the commercial community became somewhat alarmed, and, foreseeing the evils that would result from a loss of the gold standard of prices, began to seek a remedy, and to inquire how they might hold to the metallic currency. This problem had already presented itself before the end of 1862. On the 17th of September of that year the following letter, signed by a business firm of San Francisco, was printed in the *Alta California*: —

> The Legal Tender Note question with us in California is one of great importance, and should be disposed of at once by some united action of the business community. As the matter now stands, the laboring class and the producers are the ones who suffer most,— they who are the least able to bear the burden,— while the capitalist and the broker are greatly benefited.
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> The loss is particularly heavy upon those who had government contracts,— did the work low, sold the goods at the market price, with the expectation of getting gold in payment. This we think very unjust and unfair.
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> We have been compelled to receive many thousands of dollars in these notes, and, at the price we charged for our goods and labor, cannot afford to lose the discount now demanded. Our employees say they cannot receive them at par, for the reason they cannot use them at their boarding-houses, butchers', and grocers'. We paid off with them on Saturday, and on Monday twenty-five out of fifty men refused to go to work unless we would promise to pay in gold coin. Now, we say something should be done to regulate this matter; and we hope the merchants and business men will call a meeting at an early day, and take such action as their wisdom and patriotism may suggest. For ourselves, we wish to maintain the government, but would like the burden to fall equally upon all classes.*

* One of the episodes of the period marked by the depreciation of the legal tender notes was the speculation of State Treasurer Ashley. The plan of this transaction was to collect the federal direct tax in coin, and pay it into the United States Treasury in legal tender notes, thus saving to the State Treasury the difference. This transaction, although the State Treasury saved by it the sum of $24,260, was almost universally condemned.

The need of a remedy, either that here suggested or some other, was also emphasized by a writer in the *Herald* of October 22, 1862: —

> All purchase of flour, wheat, barley, and other grain [he says], as well as every description of country produce, is paid for in gold and silver coin. It is, therefore, unwise and impolitic for country merchants to expect that city dealers, jobbers, and others will or can afford to receive paper money in exchange for goods. If we pay out gold for produce, we ought certainly to receive like money in return. We allude to this subject again for the reason that efforts are being strenuously made in certain quarters to force legal tender notes off for debts long past due, which course, if persisted in, will inevitably result in restricting and limiting credits to interior buyers to what may be called substantially a cash basis. Already we know that the sifting process is going on, and even at this moment parties that a few months ago had the usual credit extended to them, now find that terms of a sale are invariably "cash before delivery."

In the same journal, on the following day, it was said that the city jobbers should come to some general understanding among themselves in regard to a uniform course of action respecting legal tender notes.

> As it is, commission men and importers have been and are still doing everything to secure themselves against loss by inserting a gold clause in every note of hand they receive, and in every contract sale they make, as well as in every bill of goods that is rendered, besides having a general verbal promise and assurance that the terms of sale are, in any event, payable in gold coin or its equivalent. Not so with the country dealers and interior creditors, as many of their goods are sent forward on orders without personal application or notes given for the goods so purchased. Consequently, jobbers are, to a certain extent, left in the gap. Selling goods as they do at a small profit, not averaging, probably, over five per cent. advance, they cannot afford to take paper money in payment at the ruinous discount at which it is ruling; and, unless some uniformity is agreed upon, all credits must be cut off, and trade come down to a cash basis.*

In accordance with these suggestions as to action in union, it was proposed to form an agreement among the

* *Daily Herald*, October 23, 1862.

merchants of San Francisco in favor of holding to a metallic currency. In this agreement, which was effected on the 8th of November, 1862, it was decided "not to receive or pay out legal tender notes at any but the market value, gold being adhered to as the standard." The plan was to have this agreement signed by all the leading firms of the city; then to have it signed also by all other firms, both those in the city and those in the country who had dealings with the city. It was thought that this agreement would establish a definite rule of action and create a coercive agency. If any one refused to enter the association, or, having agreed to pay for goods in gold, paid for them in greenbacks at par instead, then his name should be entered in a black book, and the firms all over the State should be notified, so that in all his subsequent dealings he would be obliged to pay for his goods in gold at the time of the purchase.* From the nature of the case, this form of a remedy for the evils of a depreciated currency was necessarily ineffective.

As early as July, 1862, questions raised by the circulation of the depreciated notes received the attention of the courts. In this month a case was brought before the Supreme Court of California "to compel the defendant, as tax collector of the city and county of San Francisco, to accept from the relator $270.45 in United States notes, tendered in payment of State and county taxes assessed upon his property for the present year, and to execute and deliver to him a good and sufficient receipt for the taxes." The tax collector had responded that he did refuse to receive the legal tender notes, and would continue to refuse them on the ground that this was his duty under the statute which provided that he should receive only "legal coin of the United States, or foreign coin at the value fixed for such coin by the laws of the United States."

* *Evening Bulletin*, November 10, 1862.

But the appellant claimed that, if there was anything in the revenue laws of this State conflicting with the legal tender law of Congress, then the former was subordinate to the latter; and that, in so far as they were in conflict, the State laws were repealed; moreover, that the law of Congress, in making the notes "lawful money and a legal tender in payment of all debts, public and private, within the United States," clearly intended to embrace taxes under the term "debts."

The court, however, in its opinion delivered by Chief Justice Field, held that, when the federal law which created the United States notes refers to obligations other than those to the United States,—

> it only uses the term "debts"; the notes, it declares, shall be "a legal tender in payment of all *debts*, public and private." Taxes are not debts within the meaning of this provision. A debt is a sum of money due by contract, express or implied. A tax is a charge upon persons or property to raise money for public purposes. It is not founded upon contract; it does not establish the relation of debtor and creditor between the tax-payer and the State; it does not draw interest; it is not the subject of attachment; and it is not liable to set off. It owes its existence to the action of the legislative power, and does not depend for its validity or enforcement upon the individual assent of the tax-payer. It operates *in invitum*. If authority for the distinction is required, it will be found in the cases of The City of Boston *v.* Allen, 2 Dutch. 398; Pierce *v.* The City of Boston, 3 Met. 520; and Shaw *v.* Pickett, 26 Vt. 482.
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> The term "debt," it is true, is popularly used in a far more comprehensive sense, as embracing not merely money due by contract, but whatever one is bound to render to another, whether from contract or the requirements of the law. But the legal technical meaning of the term, as used in statutes, and in the Constitution both of the United States and of this State, is as we have defined it. . . . But whatever view may be taken of taxes under our statute — whether in the provisions for their enforcement they can be treated as debts due the State — the question still recurs, What did Congress intend by the act under consideration? And upon this question we are clear that it only intended by the terms "debts, public and private," such obligations for the payment of money as are found upon contract.*

* Perry *v.* Washburn, 20 Cal. 318–352.

The judgment in favor of the defendant was therefore affirmed, prohibiting the use of the legal tender notes in the payment of State and county taxes.*

However this opinion may be viewed as matter of law, it is clear that its effect was not limited to restricting to gold and silver the money receivable for taxes. It had, besides, an important moral effect in encouraging the people of the State to take such action as would prevent the notes from becoming generally current. After the Supreme Court of the State had rendered this decision, the objectors to the legal tender notes found in this action a strong support of their conduct. In view of this decision, individual objectors to the notes could not well be accused of treason and secession. Those who had had great assurance that California would be obliged to accept them were silenced on at least one point.

But with this the debate was by no means ended. It was argued that it would be an advantage to the general government and also an advantage to the State at large, whatever might be its effects on the merchants of San Francisco, for the legislature to pass a law authorizing legal tender notes to be taken for taxes. This appeared to be the only means possible to overcome the effect of the decision of the Supreme Court against the use of the notes

* This doctrine was embodied in Section 3888 of the Political Code of California, which was as follows: "Taxes must be paid in legal coin of the United States. A tax levied for a special purpose may be paid in such funds as may be directed." By "an act in relation to the currency of the United States," approved March 12, 1880, Section 3888 was amended as follows: —

"Section 1. All legal tender notes heretofore issued, or which may hereafter be issued by the government of the United States of America, as legal tender notes, shall be received at par in payment for all taxes due or to become due to this State, or to any county or municipal corporation thereof, and such notes shall be a legal tender for all debts, dues, and demands between citizens of this State.

"Sect. 2. All acts, and the provisions of any act or parts of acts, conflicting with this act, are hereby repealed.

"Sect. 3. This act shall take effect and be in force from and after its passage."

for this purpose. Accordingly, a bill was introduced into the Assembly providing, among other things, that the legal tender notes should be received at par for all State and county taxes, dues, fines, or assessments of this State; but it failed to receive serious consideration. The mercantile community of San Francisco dominated the State, and its interests were clearly in favor of the metallic currency. Its energies were therefore directed to preventing, not to furthering, the use of the notes. In view of their depreciation, it began to be questioned whether even promissory notes which stipulated on their face for payment in gold coin of the United States could be practically enforced at law. To set aside this doubt, it was proposed, through one of the newspapers of San Francisco, to adopt some convenient form of note or contract which should be enforcible in the equivalent of specie for its amount. The following form was suggested: —

San Francisco, July —, 1862.

Six months after date, for value received, we promise to deliver to Brown, Jones & Robinson, or order, as much gold bullion as will make, when coined, fifteen hundred and sixty dollars of the gold coin of the United States, of the present weight and standard of fineness, with interest on the value of the same at the rate of — per cent.

John Smith & Co.

It was held that "a judgment rendered on such a contract note would not be for $1,560, which the sheriff might be compelled to receive in Treasury notes of the same par value; but it would be for the value of as much gold bullion as would make on being coined that amount of United States coin. If depreciated paper were the currency, the market value would be accordingly enhanced." *

The question as to whether paper or metallic money should be used appeared in a new form in relation to the

* *Evening Bulletin*, July 2, 1862.

payment of interest on municipal bonds. In the course of a discussion on the subject of paying the interest on San Francisco bonds in New York, it was said that it was for the advantage of the city, in one respect, to pay the interest in paper, as it would depreciate the bonds in the market and enable the city to buy up a larger amount of them with the sinking fund. On the other hand, while the city had an undoubted legal right to pay in greenbacks, such an action was regarded as beneath the dignity of the city and a real violation of the faith pledged with the holders of the bonds abroad. This view was taken by all the members of the Board of Supervisors, and it was determined by that body, in October, 1862, to pay interest in New York on city and county bonds in gold; and the following resolution was passed without a dissenting vote: —

> *Resolved*, That the City and County Treasurer be and he is hereby instructed to pay all interest now due, or that may hereafter become due, on city or city and county bonds, in gold coin, and that the agent of this city and county in New York be instructed to advertise to that effect.*

The exceptional condition of affairs in the Pacific States, and the earnest determination of the merchants of San Francisco to hold to gold and silver as the medium of exchange, made it evident very early that special legislation concerning the currency must be had. The creditors were at the mercy of the debtors. The federal employees found themselves at a serious disadvantage in receiving their wages and salaries in depreciated money, while the items of their expenses were counted in gold. There was danger of a wasteful interruption of business through the presence of conditions which made sales on credit attended with extraordinary risk. These immediate evils were seen, while the possible remote advantages of

* Sacramento *Daily Union*, October 30, 1862.

having a currency like that of the other States of the North were almost entirely overlooked. To avoid these evils, an early attempt was made to induce the federal government to except California from the operation of the legal tender law. Accordingly, on the 12th of February, 1863, Mr. Swift introduced into the Assembly the following resolutions, which were made the special order for a subsequent meeting: —

Whereas the ever loyal people of this State, upon forming their State government and being admitted into the Federal Union, found the then territory of California to be a gold-bearing country, and in view of that fact adopted in their constitution and in their policy and system of laws a metallic currency as a sole and only circulating medium, and ever since that time have pursued such a system to the exclusion of all banks of issue and against a paper currency; and

Whereas, in consequence of said fact and of other circumstances peculiar to this State, the law of Congress making United States Treasury notes a legal tender in payment of debts works a hardship and public inconvenience to the citizens of California far beyond that of any other State or people, and is not followed by an adequate benefit or advantage to the government of the United States,— therefore be it

Resolved, By the Assembly, the Senate concurring, that our Senators in Congress be instructed, and our Representatives requested, to urge these facts upon Congress, and to show to the general government that said law operates to derange the finances of California; to create insecurity, alarm, and uneasiness; to assist unprincipled persons to defraud their creditors out of a portion of their just debts and dues, impair the resources of the State, and materially weaken her power to aid our common country in this the dark hour of her troubles, without benefiting the good cause to any appreciable extent. And be it further

Resolved, That our Senators and Representatives in Congress be instructed and requested to use all legal and honorable means to obtain the passage of an act of Congress, excepting the State of California from the operation of said law.

Resolved, That the Governor be requested to transmit copies of these resolutions to our Senators and Representatives in Congress.

The discussion of these resolutions suggests that there were probably other things of which the legislator of those

days had a more familiar knowledge than of problems in finance. In his remarks following the introduction of these resolutions, Mr. Swift stated that the circulating medium of the State was not less than $65,000,000, and that, to be any real benefit to the government, a much larger amount must go into circulation, driving the gold entirely out. It was impossible to accomplish that; and, consequently, the law operated injuriously on our commerce, as prices did not rise here as in the Eastern States. The only benefit was derived by a few unscrupulous persons. The current rate of interest in San Francisco had gone up from one to two per cent. per month, and very few money loans were effected in consequence of the feeling of insecurity and the general belief that no contract could be drawn up to prevent the United States notes being tendered in payment in lieu of coin.* It was, moreover, urged, for the exemption of California from the operation of the Legal Tender Act, that California had always used gold currency, and all her citizens had based their contracts upon such currency; that the legal coercion of the federal government to compel the citizens to receive paper money on their contracts does materially vitiate such contracts and destroy their validity; and that such coercion does not help the federal government.†

These resolutions came up for a final discussion and vote on February 19, 1863, and met with vigorous opposition. Mr. Duncombe declared that by them the legislature was asking Congress to allow California to secede from the Union, so far as it related to the laws concerning currency and banking. It would be a suicidal act for California to do what was asked by these resolutions. Gold was the fancy stock in the Eastern States. It was not true that legal tender notes were below par, as compared with labor and commodities. The fact was that gold and silver were above par. The resolutions set forth

**Daily Union*, February 13, 1863. †*Evening Bulletin*, February 16, 1863.

that Californians were suffering under peculiar difficulties, when, in fact, California gold — the product of her mines — was selling at a premium. He wished to see this national currency made as general as possible. He did not wish that the great and glorious State of California should be exempt from a general law designed for the benefit and salvation of the whole nation. He further suggested that the political influence of the resolutions was enough to condemn them, and their financial effect would be to retard the growth and prosperity of the State. The passage of the resolutions would look like a desire on the part of California to shirk her share of the financial burden of the war. If California asked for this exemption, said another opponent, why should not Illinois and other States ask it? The government was pledged to its financial policy, and must now stand or fall by it. The question, then, was whether they should stand by the government or not. He would be about as willing to have the legislature pass a resolution of secession as these.

To this Mr. Swift replied that the action called for by these resolutions, he believed, would be absolutely beneficial to the general government. The extension of the law to this coast had produced no benefit to the general government, and its repeal, so far as California was concerned, would do no harm. The fact that notes could be tendered in the payment of debts between man and man was working great injury to the business community, and would result in the entire destruction of the credit system. Loans could not be effected except in cases where men relied upon the personal honor and integrity of the borrower. In this debate Mr. Sanderson affirmed the constitutionality of the proposed exemption, and declared that Congress obtained its right to make paper a legal tender, not from the clause authorizing it to coin money, but from its right to self-protection,— its right to make war and do anything to save the country in time of war. The power

which determined the necessity determined the extent of the necessity. It could say that the necessity existed in the Atlantic, and not in the Pacific, States. It could consequently say, if it chose and believed it wise, that California should be exempt from the operation of this law. Other advocates of the resolutions laid stress on the fact that, in arguing for them, they were in no sense manifesting disloyalty to the Union. The measure was, however, postponed indefinitely in the Assembly by a vote of 49 to 11.*

The plan to except California from the operation of the legal tender law having failed, an effort was made to obtain relief for the officers and employees of the federal government living in California. It was proposed to have their wages and salaries paid in gold; and, as a step towards this end, the following resolutions were introduced into the Senate: —

Whereas, since the admission of California into the Federal Union its currency has been metallic, and has so continued to the present date; and whereas every officer, soldier, and seaman of the Army and Navy of the United States, and every citizen employee in the service of the government of the United States on duty on the Pacific coast, and at all points west of the Rocky Mountains, have their salaries and pay prescribed by law; and whereas recent instructions have been received from the Treasury Department, directed to the Subtreasurer at San Francisco, hereafter to pay on checks of disbursing officers naught but legal tender notes,— now, therefore, in view of the depreciation of said paper currency on said coast and the utter impossibility of passing the same save at their marketable value, gold and silver being the stated medium, and the cost of living being double that in the Atlantic States where these notes pass at par, be it

Resolved, by the Senate, the Assembly concurring, That our Senators in Congress be instructed, and our Representatives requested, to impress upon the Executive the absolute necessity which exists of having officers and soldiers of the United States Army, officers and seamen of the United States Navy, and all other citizen employees in the service of the government of the United States, serving west of

* *Daily Union*, February 20, 1863.

the Rocky Mountains and on the Pacific coast, paid their salaries and pay in gold and silver currency of the United States.

Resolved, That this preamble and resolution be without delay telegraphed by the Governor of this State to our delegation in Congress, in order that immediate action may be had upon the same.

These resolutions aroused the advocates of inflated currency. Speaking to the motion to refer them, Mr. Shannon, a Senator, said: "I believe we shall have to do one of two things, either accept the national currency as money, and make it the basis of California, or secede from the Union. We cannot continue to live under the present state of affairs, repudiating the government's currency, its life blood, and pretending at the same time to be loyal." After a brief debate the resolutions were referred to the Finance Committee,* and disappeared.

But these measures, even if they had been adopted by the legislature, would not have accomplished what was needed to keep the business of the State on a specie basis. It became clear in the course of time that legislation must be had to enable parties to enforce in the courts the collection of the kind of money which had been specified in the contract. This plan, which at first took root slowly, at last attracted the attention of all those who wished to retain gold as the standard medium of exchange. The *Daily Herald* was conspicuous as its early advocate. A writer in this journal, February 16, 1863, found very little difficulty arising from the use of legal tender notes; for they had a market value, and most people were ready to receive them at that value. But certain inconveniences arose later; and on March 7, 1863, the same journal pointed to the remedy that was ultimately made effective: —

As there are two kinds of money provided by Congress [it was said], let us confess the fact, and let the legislature recognize the distinction, too. Let contracts in gold and silver be enforced, as they are

* *Daily Union*, February 20, 1863.

made in good faith. Let some proper statute give validity to agreements expressly made upon a specie basis, as well as to any other contracts which neither are wrong in themselves nor contravene the general policy.... Let gold and silver continue in California, as heretofore, the only standard in ordinary transactions, and let paper be used at its market price.*

This journal continued to advocate such legislation as would make it possible to enforce specific contracts. "It is past all contention," it was said in the issue of March 16, "that contracts fairly made in view of all the circumstances ought to be enforced. If, then, contracts are made specifically to be performed by the payment of gold, it seems to us to be a duty on the part of the legislature to provide the remedy for their enforcement. Common honesty cannot refuse this. Fair dealing and the general interest demand it." The views here set forth were not, however, antagonistic to the use of legal tender notes, but only insisted that it was for the interest of California "to preserve a uniform standard of price in trade, while at the same time giving real encouragement to the employment of the paper money of the government at its relative current value."

The legislation required to accomplish this purpose, and to enable business to proceed on a specie basis, was embodied in an act amending the statute of 1851, which regulated proceedings in civil cases. The essential points of the change are set forth in the following sections from the amended law: —

In an action on a contract or obligation in writing, for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether the same be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein; and, in an action against any person for the recovery of money received by such person in a fiduciary capacity or to the use of another, judgment for

* *Daily Herald*, March 9, 1863.

the plaintiff, whether the same be by default or after verdict, may be made payable in the same kind of money or currency so received by such person.

The writ of execution shall be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff, and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, and, if it be for money, the amount thereof and the amount actually due thereon, and, if made payable in a specified kind of money or currency, as provided in section two hundred of this act, the execution shall also state the kind of money or currency in which the judgment is payable.

If the writ be issued on a judgment made payable in a specified kind of money or currency, as provided in section two hundred of this act, it shall also require the sheriff to satisfy the same in the kind of money or currency in which said judgment is made payable, and the sheriff shall refuse payment in any other kind of money or currency; and, in case of levy and sale of the property of the judgment debtor, he shall refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The sheriff collecting money or currency in the manner required by this act shall pay to the plaintiff or party entitled to receive the same the same kind of money or currency received by him; and, in case of neglect or refusal to do so, he shall be liable on his official bond to the judgment creditor in three times the amount of money so collected.*

The bill containing the foregoing provisions passed the Assembly March 17, 1863, by a vote of 42 to 18. The vote on its passage in the Senate was 22 to 11. Whatever opposition it encountered appears to have arisen from doubt as to its constitutionality and practical effects. The discussion of it which was had in the legislature presented it not as a radical measure interfering with any established rights, but rather as a stimulus to men to stand squarely up to their obligations. It recognized both the lawful metallic currency and the legal tender notes as money, but it allowed the parties to a contract to have a definite knowledge beforehand of the kind of money with

* *Statutes of California*, 14th Session, Chap. 421.

which the obligations of the contract would be met. In the final discussion in the Assembly Mr. Sanderson called attention to the fact that the bill only provided that contracts specifying a particular kind of currency should be made payable in that currency, bringing such contracts within the doctrine of equity, so that courts might enforce them. Not a word was said in the bill about gold or silver or paper currency; but a creditor might stipulate to have the payment made in English sovereigns or Spanish doubloons, just as the parties might agree, and the contract would be enforced. Under the law, as it stood before the passage of this act, a man owing $100 could pay it with $50, which was inequitable, contrary to justice, and ought to be contrary to law. There was nothing unconstitutional or wrong in enabling the courts to enforce the carrying out of a contract according to its spirit and letter. The government had presented to the commercial world two mediums of exchange, and parties were at liberty to use either; but, when once they had made their selection, the courts should have power to hold them to it. To allow a person after borrowing money in one currency and agreeing to pay in the same to violate that agreement and pay in another currency worth only half as much was an outrage upon the principles of justice and equity. This law did not discriminate between the two currencies; but it enabled parties to make contracts understandingly and upon equal terms, whichever currency was used. The passage of this bill would not injure the credit of greenbacks, and its rejection could not enhance their value or increase their circulation. This act, on the contrary, would give the United States Treasury notes legal standing and recognition, thus giving stability to paper currency. In the same discussion Mr. Hartson said that the great advantage of the bill would be to harmonize the conflict between the two standards of value. In this State, unused to paper currency, remote from the States

where that currency is used, and producing gold as its chief product, it was impossible to change from the old standard without immense losses and inconvenience. The act would be, in fact, an acknowledgment of the validity of the Legal Tender Act of Congress; and it would injure nobody, unless it was an injury to a man to compel him to abide by his agreement. It would strengthen the State, settle the uncertainties of commerce, unlock the treasuries of credit, and inspire new confidence in business men.*

In the opposition which had been raised against this bill in the course of the discussion in the legislature it was assumed that to pass such a law would be "inconsistent with patriotism," and, moreover, that it would inflict an injury on the State by interfering with the importation of capital and by preventing the growth of the population through immigration. But the opposition which had arisen on doubts concerning the constitutionality of the law was soon set aside by the courts. In July, 1863, in the case of Carpenter *v.* Atherton, the Specific Contract Act was pronounced constitutional; and it was held that the specific contract to pay in gold, which was the foundation of the judgment in this case, was more than a contract for the payment of money merely, but went to the extent of defining by what specific act the contract should be performed. "By the admitted and settled rules of law such a contract can be performed, according to the agreement of the parties, only by the payment of the kind of money specified." According to this decision, the law in question created no new rights in the abstract, but merely added "to the cases in which it is competent for the courts to enforce the execution of contracts specifically," and provided the means by which this could be done. In this the act was found to be in harmony with the doctrines of equity jurisprudence relat-

* Sacramento *Daily Union*, March 18, 1863.

ing to kindred subjects, and at the same time in no just sense "contravened the laws of Congress making United States notes lawful money and a legal tender in the payment of debts." The court could not "say judicially that a gold or silver dollar is of greater or less value than a United States note of the same denomination," but affirmed that —

> A contract payable in money generally is, undoubtedly, payable in any kind of money made by law legal tender, at the option of the debtor at the time of payment. He contracts simply to pay so much money, and creates a debt pure and simple; and by paying what the law says is money his contract is performed. But, if he agrees to pay in gold coin, it is not an agreement to pay money simply, but to pay or deliver a specific kind of money, and nothing else; and the payment in any other is not a fulfilment of the contract according to its terms or the intention of the parties.*

Not less important than the foregoing doctrine was the decision that the Specific Contract Act "applied to contracts made before as well as after its passage." In the case of Galland et al. *v.* Lewis et al. action was brought to enforce the payment of a note which had been executed September 1, 1862, and made payable in United States gold coin on the 15th of October of the same year, thus prior to the passage of the Specific Contract Act. It was held that, "where laws confessedly retrospective have been declared void, it has been upon the ground that such laws were in conflict with some vested right, secured either by some constitutional guarantee or protected by the principles of universal justice." But this act "takes a contract as it finds it, and simply enforces a performance of it according to its terms," and "is not liable to objection, because it may have a retroactive operation by way of relation to past events." † In Lane *v.* Gluckauf it was further held that a contract in the form of a note "to pay a specific sum in gold coin, or, upon failure thereof, to pay

*25 Cal. 564. †26 Cal. 47; 27 Cal. 80.

such further sum as might be equal to the difference in value between gold coin and legal tender notes, belongs to the class of contracts provided for in the so-called Specific Contract Act, and might be enforced according to its meaning." * Also, in a later decision, in the case of Beaudry *v.* Valdez, it was established that a tax due for an assessment for improving a street might be assessed upon a gold basis and collected in gold coin.

The Specific Contract Act was approved April 27, 1863, and was received with manifest satisfaction by the commercial community. The people of San Francisco had special reason to be pleased. The satisfaction was not, however, universal; for in the session of the legislature of 1863–64 a bill was introduced into the Senate to repeal this law. In his report as president of the San Francisco Chamber of Commerce, dated May 10, 1864, Mr. James de Fremery refers to the fact that "the advocates of repeal made every effort to attain their object." Their project was kept on foot for some time; and, in view of the proposed repeal of the Specific Contract Law, the Chamber of Commerce of San Francisco issued an address to the people of California. It was unanimously adopted, and contained a vigorous presentation of the argument in favor of maintaining the law. Among other things, it was said that, at the time of the adoption of the Specific Contract Law,

> the interests of the entire State were jeopardized by the threatened withdrawal from circulation of large amounts of capital, through apprehension that certain fiscal measures of the government would be availed of for dishonest purposes. The law simply enforces the faithful performance of contracts. It enjoins good faith, a principle which lies at the very foundation of public prosperity, and without which there can be no mutual confidence, no progress, no credit, and no trade upon the enlarged and liberal theories of modern commerce. The passage of the law not only averted the calamity, but, upon the faith of it, very considerable accessions of capital were brought to this

* 28 Cal. 288.

country. Over $1,500,000 from foreign sources have been located here permanently, within little more than a twelvemonth, for banking purposes alone; while over $3,000,000 in gold from the Atlantic cities have been placed in our securities and other property, and a still greater amount but awaits our call and favorable opportunities for investment. That the abrogation of this, though without prejudice to existing contracts, will be followed by disastrous results, is confidently believed; for the reflection very naturally arises that the morals of a community must be at a very low ebb where the restraints of such a law are found irksome to the majority, and the desire for its repeal will certainly be attributed to a wish for license to do what it forbids. That this will be the public verdict, in the event of repeal, can hardly be doubted; and capital, with its usual timidity, will in that case seek other channels.

The address was signed by all of the leading firms and business men of San Francisco, and was indorsed by the various laborers' associations. The president of the Trades-union remarked, in giving his indorsement, "that the subject had been latterly very freely discussed in most of the trade organizations throughout the city, and that a like unanimity of sentiment prevailed in them all." The bill providing for a repeal of the Specific Contract Law was defeated in the Senate by a vote of 24 to 16. The impossibility of repeal having been practically determined by this vote, the business of the Commonwealth may be said to have acquired a settled monetary basis.

BERNARD MOSES.

RECIPROCITY.

I DO not propose, in the following pages, to consider the details of the reciprocity arrangements concluded within the last year or two under the provisions of the tariff act of 1890. My object is chiefly to discuss the mode in which reciprocity treaties usually operate, to point out the peculiarities of the form of reciprocity which this country is now applying, and to say something of the general bearing of such arrangements on the problems of international trade.

The mode of reciprocity provided for in the McKinley Tariff Act is unusual. The act gives authority to the President to reimpose duties on certain articles ordinarily admitted free,— tea, coffee, molasses, sugar, hides,— if he is satisfied that other countries, from which these articles are sent to the United States, fail to reduce their duties on American goods to such an extent as to constitute a reasonable equivalent for our remission.* In other words,

* The often-quoted reciprocity section of the tariff act of 1890 may be quoted again: "That, with a view to secure reciprocal trade with countries producing the following articles, and for this purpose, on and after the first day of January, 1892, whenever and so often as the President shall be satisfied that the government of any country producing and exporting sugar, molasses, coffee, tea, and hides, raw and uncured, or any of such articles, imposes duties or other exactions upon the agricultural or other products of the United States, which, in view of the free introduction of such sugar, molasses, coffee, tea, and hides into the United States, he may deem to be reciprocally unequal and unreasonable, he shall have the power — and it shall be his duty — to suspend, by proclamation to that effect, the provisions of this act relating to the free introduction of such sugar, molasses, coffee, tea, and hides, the production of such country, for such time as he shall deem just, and in such case and during such suspension duties shall be levied, collected, and paid on sugar, molasses, coffee, tea, and hides, the product of or exported from such designated country, as follows": on sugar, about one cent a pound on the ordinary grades; molasses, four cents a gallon; coffee, three cents a pound; tea, ten cents a pound; hides, one and a half cents a pound.

a threat of imposing duties on their goods constitutes the pressure brought to bear on foreign countries. The usual mode of reciprocity is different. It does not threaten the imposition of new duties, but offers the reduction of existing duties. That the United States adopted a form of reciprocity which has an aspect perhaps of greater vigor and certainly of less courtesy is not the result of any deliberate policy. Like so many things in our tariff legislation, it arose without premeditation. The articles to which the reciprocity provisions apply had already been made free of duty on grounds independent of any desire to further foreign commerce. Tea, coffee, and hides were freed from duty twenty years ago. The abolition of the sugar duty had been settled in the early part of the session of 1890, before the reciprocity scheme emerged. It was impossible to apply to these articles the usual machinery of commercial engagements; and, when a policy of reciprocity was suddenly determined on, the only way of carrying it out was the peculiar one which was finally adopted, as an afterthought, in the tariff act of 1890.

Before discussing the workings of this unusual form of reciprocity, we may consider briefly the effects of the usual form,— the remission or reduction of duties in return for similar favors by foreign countries. Reductions of this sort have very different consequences according to the conditions under which they are applied. In some cases, they redound to the benefit of the foreign producer: in others, they redound to the benefit of the domestic consumer. Some consideration of these two possible effects will be helpful for the understanding of the general workings of any form of commercial engagement.

Suppose the remission of duty, under the usual form of reciprocity, to be applied to one country only. Suppose, for example, that we remitted the duty on coffee coming from Venezuela, retaining it on coffee coming from other countries. The Venezuelan coffee-planters, and not the

American consumers, would get the benefit of the remission. Venezuela supplies — or, rather, supplied — only one-tenth of our consumption of coffee. The remaining nine-tenths, coming from other countries and still paying duty, would be higher in price in the United States by the amount of the duty. The Venezuelan coffee-planters would not sell their coffee for less than other people got: why should they? They would simply pocket the amount which otherwise would have been paid in duties. In general, it may be laid down that any remission of duty which does not apply to the total importations, but leaves a considerable amount still coming in under the duty, puts so much money into the pockets of the foreign producer.

The United States has had one very striking experience of this sort of reciprocity. The treaty made with the Hawaiian Islands in 1876 stipulated for the free admission into the United States of certain commodities, among which sugar was the most important. In return, we got similar remissions in the Sandwich Islands. Hawaiian sugar was admitted free: other sugar paid duty. The Hawaiian sugar formed at the outset only a small fraction of the total supply; and, though it grew very rapidly under the treaty, it never formed more than a tenth of the supply. It was sold, naturally, at the same price as other sugar paying duty; and the American consumer who used it paid a tax in the shape of a higher price, exactly as he paid a tax on duty-paying sugar. The tax, however, went not into the national treasury, but into the profits of the Hawaiian sugar-raisers. Throughout the period when Hawaiian sugar was free and other sugar paid duty, the price of sugar on the Pacific coast, where the Hawaiian sugar was used, was fully as high as it was elsewhere. Whoever got the benefit of the remission of the duty, it was not the consumer. In this particular case, it should be added, there were some complicating

conditions. The capital invested in sugar-raising on the Sandwich Islands was largely owned by Americans. Consequently, the virtual tax still paid by sugar-consumers inured to the benefit of other Americans rather than of foreigners. The effect was much the same as if the tobacco-growers of the Connecticut Valley had been freed from the tobacco tax while other growers still had to pay it. Further, the business of refining this Hawaiian sugar on the Pacific coast got into the hands of a single establishment, the owners of which were largely the same persons who had invested capital in sugar-raising in the Sandwich Islands. These fortunate individuals consequently added the profits of a monopoly of sugar-refining to the profits of a tax paid for their benefit by the consumers of sugar. The Hawaiian treaty therefore presented peculiarities in more respects than one. But we are here concerned chiefly with that aspect of it which bears on the subject of the present article,— the effect on sugar consumers and producers. It was clearly the latter who benefited by the arrangement.

Suppose now a different sort of case,— a remission of duty not to a single country, but to a number of countries, so considerable and important that all the importations come in free of duty. Here the change redounds to the benefit of the domestic consumer. No articles continue to come in paying duty, and the remission is virtually the same as a general reduction or abolition of the duty. The effect is the same if the favor is granted to only one country, but that country is able to supply the entire consumption. If, for instance, by a treaty with Australia, wool from that country were admitted free, the effect would be the same as relieving fine wool entirely from duty. The amount of such wool raised in Australia is so great that all we should use would come in duty free; the price would go down by the amount of the previous duty; the domestic purchasers of wool and eventually the

domestic consumers of woollens would get their goods so much cheaper.

The most important illustration of this effect of reciprocity treaties in recent times is to be found in the experience of European countries after the famous commercial treaty between England and France. France, after having maintained for centuries a rigid system of high duties, made a treaty with England, in 1860, by which English commodities were admitted at very moderate rates. England in return abolished entirely her duties on silks, and lowered her duties on French wines. The changes made by England were, from the first, of general application: all countries were free to take advantage of them. France, it is true, began by extending her favors to England only. It is probable that, even if they had never been extended to other countries, they would have worked like our supposed remission of duty on Australian wool, and not like our Hawaiian treaty. England would have been able to supply most of the goods in ample quantity, and the French consumers would have had the benefit of the remission. But any doubt on this point was settled by the prompt conclusion of treaties giving the same favors to other countries,— to Germany, Austria, Belgium, Italy, Switzerland, and so on. These countries were given the same favors as England, and in return conceded reduction of duties on French goods. In effect, therefore, the machinery of reciprocity led to the general application of a more liberal tariff system in France. Moreover, other countries were led by the example of France to the same course. Germany (or, to speak accurately, the Zollverein), having concluded the treaty with France, soon made similar engagements with other countries; Austria, Belgium, Switzerland, Italy, followed suit; and in a few years after 1860 Europe was covered with a network of commercial treaties, bringing about a great moderation in the general tariff policy of all the continental countries.

A more recent case of the same sort is to be found in the commercial treaties concluded by the German Empire during the present year. For one reason and another France tired of the system of commercial treaties, and has just substituted for it a different *régime*, one not only of a distinctly protectionist character, but involving a threat of higher duties on non-reciprocating countries, which is not very different from the sort of reciprocity just established by our own legislation. Oddly enough, at the very moment when France is thus dropping her commercial treaties, Germany is again entering that path. The recent treaties concluded with Austria, Italy, Belgium, Switzerland, provide for reciprocal reductions duties, which amount virtually to general reductions and so redound to the benefit of the consumers in the respective countries. Thus Germany lowers her duties on wheat and Indian corn, when imported from the treaty countries; but this reduction has already been extended to grain coming from the United States, and undoubtedly will soon be extended to Russian grain. Of the bearing of this latest move of Germany's on our own reciprocity scheme, more will be said presently. So far as German consumers are concerned, they will certainly get the benefit of the change: their bread will be cheaper.

Obviously, the probabilities are strong that a remission of duties by way of commercial treaty or reciprocity will operate in this second way. Cases like our Hawaiian treaty are rare: a country will not often accept a loss of revenue, and transfer a gain to foreign producers, by remitting a duty on a portion only of its imports. Ordinarily, the remissions of duty by treaty to favored countries become, in fact, general remissions, and serve simply to make trade more free between a large number of countries.

From this sketch of the character and working of the ordinary form of reciprocity, we may turn to a considera-

tion of the peculiar form adopted in our tariff act of 1890. Here the plan is not to remit a duty for countries granting favors, but to impose one for countries failing to grant them. A duty so imposed, like one remitted, may have very different effects, according to the conditions under which it is applied. As the remission of a duty may or may not operate for the benefit of the domestic consumer, so the imposition of a duty may or may not operate to his detriment.

Suppose, for example, that a duty is imposed on coffee coming from Venezuela,— a duty which has actually been imposed under the reciprocity provisions. The revolution in that country, as it happens, has complicated the effects of the measure; but it is not difficult to see how it would work under undisturbed conditions. Venezuela supplies us in ordinary times with about one-tenth of the coffee we use. The remainder comes from other countries, chiefly from Brazil. If a duty were imposed on the Venezuela portion, the price, nevertheless, would not rise in the United States; for Brazil coffee would still come in free, and somewhat more of it would quickly come this way if the price rose. The Venezuelans must either sell their coffee to us at a price lower by the amount of the duty — *i.e.*, they must pay the duty — or else must send their coffee to another market. The latter result would undoubtedly ensue. It might take time to form new trade connections, and might cause temporary loss to introduce their coffee to a new set of consumers; and the embarrassment, while it lasted, might be considerable. But it could hardly last very long; and, at all events, this temporary loss would represent the effect of the measure on the non-reciprocating country. The American public would not be affected.

The situation would be very different, however, if the duty were imposed on coffee coming from Brazil. The bulk of our coffee comes from that country, and it would be difficult to secure the supply from other sources.

Other coffee would indeed come in duty free; but it could not begin to supply our entire consumption. A duty on Brazilian coffee would cause the price to rise in the United States, and the American consumer would pay the tax. Of course, the price of all coffee would go up,— not only of the Brazilian article, but of any other of the same sort that might also come in. Producers in other countries would get the higher price of coffee, but their product would not be subject to the duty: the American consumer would be taxed for their benefit. The situation would be virtually the same as that under the Hawaiian treaty. If one indispensable part of the supply is taxed, the price of the whole supply goes up: those producers who are exempt — the Hawaiian sugar-planters in the actual case, the non-Brazilian coffee-planters in the supposed case — pocket the amount of the tax.

In general, then, it may be said that a duty imposed under our reciprocity legislation will hurt the foreign producer — perhaps hurt him only for a time, but yet hurt him — if he does not furnish a very great part of our supply, and if other countries can easily step in his place. But if the foreign producer sends us the bulk of the supply, and if others cannot fill his place, the duty will tax the American public, and will put money into the pockets of other foreign producers. We have seen how a duty on coffee from Brazil would work. A duty on hides from the Argentine Republic would probably work in the same way. Our imported hides come in large part from that country, and a duty on them would raise their price here. A duty on sugar from Cuba would work, for a time at least, in the same way. It is true we are not so dependent on Cuba for sugar as we are on Brazil for coffee. Other countries contribute to our sugar supply, and could in time greatly increase their contributions. But Cuba is much the most important source of sugar for us, supplying a full third of the total imports; and a duty on

Cuban sugar would cause the price of sugar to go up. After a while, no doubt, by a shifting of the sugar markets and perhaps some changes in production, other countries might send enough free sugar to us to supply our entire consumption, while Cuban sugar would go to England and to other countries not discriminating against it. But, at first, we should pay more for all our sugar; and some part of our extra payments would go to the countries, other than Cuba, from which our supplies come.

Practically, however, we are hardly called on to consider the consequences of a duty on Brazilian coffee or on Cuban sugar. It is very improbable that such duties will be imposed. The President is not likely to exercise his discretionary power in such a way as to bring about a tax on American consumers, least of all a tax which would redound in part to the benefit of foreigners. With important countries, like Cuba and Brazil, a diplomatic use of the possibility of discriminating duties will be relied on. With the Argentine Republic the situation has been different. The financial condition of that country has made it out of the question to secure any lowering of its duties on American goods; yet no duty on its hides has been imposed, or is likely to be. Smaller countries can be brought to terms with ease. One can be played off against the other, and pressure can be brought to bear on them with little danger of hurting the domestic consumer. The only case of any importance in which a discriminating duty has in fact been imposed is that of Venezuela, already referred to.

So much as to the effect of the possible imposition of our duties on the American consumer and the foreign producer. But there is another important aspect of the reciprocity questions,— the effect on foreign countries of the concessions granted by them on American goods. How will these work?

We ask of other countries, in return for refraining from

duties on their products, concessions of the usual sort,— lower duties, or none at all, on American imports. We demand such favors chiefly from the countries of South America and Central America. The very list of articles on which the reciprocity clause authorizes duties — coffee, tea, sugar, molasses, hides — points to these countries. The mention of tea, it is true, seems to indicate that some effort is to be made with China and India. But nothing has yet been done in that direction; and, indeed, the conditions here are in any case such that a duty would prove a two-edged sword. There is one other region in which concessions have been sought and obtained, and of which a word may be said. The threat of imposing duties on beet-sugar from Germany and Austria has been used to induce these countries to admit American articles at the lower rates which these countries have granted, each to the other, by the treaties concluded in the present year, to which reference was made a moment ago. So far as Austria is concerned, these lower rates are nominal, since the articles affected are such as the United States never would export to Austria under any conditions. With Germany we get a more substantial concession. Some agricultural products, especially wheat, are admitted at the lower duties of the new treaty tariff. Clearly, the concession is one which it was for Germany's own advantage to make. When Hungarian wheat was once admitted at a lower duty, it was best to admit American wheat also at the same rates. It was not difficult, therefore, to secure this favor from Germany in exchange for a promise to let German sugar alone.

But, to repeat, it is the South American countries that the reciprocity scheme chiefly looks to; and it is in the concessions granted by them that we are likely to find its most important effects.

There are two sorts of goods which we may send to the South American countries: first, goods which we produce

very cheaply and in great abundance; second, goods which we do not produce as cheaply as European countries. In the first class belong most agricultural products, especially breadstuffs and meats, and many manufactures, such as furniture, wooden ware, and most tools and implements. In the second class belong articles like woollens, linens, crude iron, and many miscellaneous manufactures. The reader will see at once that remissions of duties will have very different effects on these two classes of goods. On articles of which breadstuffs are representative, lower duties in the South American countries will operate virtually as lower duties for all comers. In wheat, flour, meat products, the United States is the natural source of supply for Cuba, Brazil, and other countries. Lower duties or free admission will bring lower prices to the consumers in the South American countries, and will serve to enlarge the volume of trade between them and the United States. The same holds good of those manufactured goods, not a few in number and importance, in which we have advantages in production. I have mentioned wooden ware and furniture: the list might be indefinitely extended. A wider range of international trade brought about in such articles will be advantageous to both countries.

The advantage to the United States from such arrangements is almost always assumed, in current discussions, to be secured by the domestic producer of the exported articles, and especially by the farmer. But both the extent and the duration of any such advantage are much overrated. Its extent is overrated, because, after all, the volume of our trade with the South American countries is small, and is likely to remain small. The bulk of our agricultural exports goes to Europe. Its duration is overrated, because any increase in foreign demand for our wheat and corn and meats is likely soon to be met by increased production at home, leaving the producer in

about the same position as he was at the outset. The real and permanent gainers will be the consumers in both countries,— the consumers of our breadstuffs and manufactures in South America, and our own consumers of the commodities imported in exchange from South America or elsewhere. I fear it will be long before this mode of looking at the problems of international trade becomes accepted by the general public. The common notion is still that the great object of international trade is to sell, to dispose of the exports. No doubt the process by which a gain in exports redounds to the advantage of the consumers of the imports is a less certain and unfailing one than the usual expositions of the Ricardian doctrine would lead one to suppose: here, as elsewhere, the machinery of trade works out its permanent and important results but slowly. Nevertheless, it is certain that the consumers of the imports are the persons who gain in the the long run by an enlargement of international trade, whether secured by reciprocity or any other way.

Looking now at the second class of goods on which South American countries may be asked to concede lower duties, we find different conditions. These are goods which the United States does not produce so cheaply as foreign countries. Here a remission of duties might cause a loss of revenue for Cuba and Brazil, without a gain to their consumers. American woollens, for instance, might make their way in at lower duties, and yet might be as dear as English woollens at higher duties. In such a case, the United States would be in the ungracious position of forcing a friendly power, by a threat of duties on its goods, to make a concession which would involve a clear loss to its own citizens. But the case is one not likely to occur in practice. Goods of this sort have not been usually included in the list of articles on which, by the treaties recently concluded, duties have been lowered or abolished. The articles affected have been chiefly of

the class described in the preceding paragraph,— those which the United States produces abundantly and cheaply. Breadstuffs have been by far the most important among them. The manufactured articles enumerated have in the main been such as we make to at least as good advantage as other countries. One possible exception of importance is in the case of cotton manufactures, which have been admitted at lower duties by some of the treaties, and which, in the qualities demanded by South American consumers, our New England manufacturers perhaps could not supply so cheaply as those of old England. It may be said, in passing, that cotton goods are, so to speak, on the line, the margin of difference in price between the American product and the European one being a very narrow one. In such cases, the choice of one product rather than of another is much affected by custom, tradition, the stronghold of established connections. A reciprocity arrangement, giving the United States a preference in duties, might here shift the trade into American hands without causing any real disadvantage to the South American consumer.

But such a change, merely from the reciprocity provisions, is not likely to take place, for another reason. Any lowering of duties which really redounds to the disadvantage of the domestic consumer is not likely to endure. Such reductions are certain, sooner or later, to cease to be preferential: they will be given to all comers. As I have already said, a discrimination such as we gave the Hawaiian Islands, leading to loss of revenue to the government and no cheapening in price to the public, is very exceptional. The experience of European countries shows that favors in duties soon cease to be favors, being given practically to all countries. The South American countries, so far as they make treaties giving the United States a real advantage over foreign competitors, will extend their provisions to foreign countries. And, surely,

no generous-minded American would wish that it should be otherwise. Unless we regard international trade as a game in which each party tries to overreach the other, we must put our relations with foreign countries on a basis which insures a benefit from the exchange to all parties.

The net result of the reciprocity arrangements, therefore, will probably be not to bring special gains to any particular sets of producers, but to enlarge a trifle the general volume of international trade, and so to diffuse more widely the benefits of the division of labor between nations. The gain to the United States will not be great in degree, simply because the volume of our trade with the South American countries is not large, nor likely for some time to become large. In kind, the gain will be of the same sort as would ensue if we lowered other duties or induced other countries to lower their duties still farther. The procurement of imported commodities in exchange for exports, which is the essential benefit of international trade, is usually — I will not say always, but usually — hampered to our detriment by protective duties. If reciprocity arrangements for lowering or abolishing duties on both sides are advantageous, a moderation of our protective duties may be expected to be also advantageous.

F. W. Taussig.

INSURANCE AND BUSINESS PROFIT.

THERE is more in the theory of insurance than has been expressed even by recent and acute discussions of the subject. Professor Mangoldt in Germany and Mr. Frederick B. Hawley in this country have made a definite contribution to our knowledge of the principles governing business risk and its reward. Working independently, they have reached one conclusion that cannot be overthrown. In a sense there is a net gain realized from risk-taking. Men do not hazard their capital for an amount of annual gains that in a long term of years will just offset their losses. They demand more than this, and get it. If the chance of losing one's entire capital in a year be as one in a hundred, the natural offset for this hazard will be a gain of more than one per cent. of the capital exposed. If, of a hundred men engaged in a particular business, one fails each year, the ninty-nine will get enough to more than make good, to the group as a whole, the destruction of capital entailed by the single failure. The wealth represented in this department of business is not only kept intact, but is increased, by virtue of a gain that is the direct reward of risk-carrying. To every other industry, and therefore to society as a whole, there accrues each year an accession of wealth that is the offset for perils encountered. Business repays men, not only for their labors, but for their fears.

Is this equivalent to saying that true business profit is resolvable into an offset for risk? Are these writers correct in referring to this cause the whole gains of the *entrepreneur*, or even a part of them? There is no difficulty in separating from the whole income of society a gain to which the term "profit" may be accurately applied.

Defray all the expenses of bringing a product into existence, sell the article for what you can get, and, if you have anything more in your hands than you had at the beginning of the operation, you have received a true profit. It is a mercantile margin,—an excess of an *entrepreneur's* receipts over all his disbursements. In society at this moment many men are realizing this gain, and the sum total of it all constitutes the true profit accruing to the business world. *The reward of risk-taking is no part of this particular sum.*

What I undertake to show is that the gain that is discussed in Mr. Hawley's recent articles in this *Journal* is not a part of a mercantile profit, as realized by the *entrepreneur:* it is realized by the capitalist as such. It is paid to the man who furnishes capital by the one who hires and uses it. Profit, in the strict sense, begins only when something comes to the *entrepreneur* over and above this disbursement and all others. Ultimate profits of this kind are realized in vast amounts here and there in the business world. In quantity they do not, in different cases, correspond to the degrees of risk encountered, but seem frequently to vary inversely as the dangers. A clear line of demarcation can be drawn between them and the sum that offsets hazard. This latter sum is wholly included in the amount that represents the true actuarial value of the risk incurred by capital; and in this fact lies the key to the solution of the problem.

The employer of capital must pay to the owner of it enough to offset the entire chance of personal harm that may befall the lender. This impending evil must be estimated according to recently discovered principles. We must gauge in some way the magnitude of the evil that befalls a man when his capital is swept away, and give him enough to induce him to take the chance of suffering that evil. It is in making the estimate of the personal harm signified by the loss that we apply in a new

way the principle of subjective value, which has lately removed so many difficulties of economic theory. Business risks are carried for their *subjective* actuarial value.

The certainty that in a year just one man in every hundred engaged in a particular business will fail is, to the group as a whole, equivalent to a continuous and uniform loss of one per cent. of the capital invested. This percentage expresses about what the group could afford to incur the risk for if the members were to unite in a mutual insurance company and, by a small annual payment from each one, make up to the unlucky member his lost capital. If after such an arrangement the chance of loss continued to be as one in a hundred, one per cent. would be the actuarial value of the risk.

The loss is not in fact pooled, but is borne by the one on whom, in the course of business, it falls. To that man the negative value of the risk is much greater than the above simple calculation would indicate. A large group of capitalists can carry the risk for about one per cent.,* but no one of them separately can do it. A particular man who exposes his entire capital to the danger of being swept away must have a gain large enough to offset the danger of suffering a very grave personal injury. This is not measured by the figure that expresses the amount of the capital itself, but by a much greater figure. One chance in a hundred of losing one's entire capital is a danger that, as has rightly been claimed, is not actually faced for one per cent. As can easily be shown, it ought not to be faced for that amount.

How is the value of this personal risk computed? Actually, by crude guesses, which in any one case are liable to vary much from a correct estimate. They probably average correctly enough; and they are undoubtedly

* Exact mathematics will show that the slight danger that losses may come together is an element that needs to be considered in a full study of the subject. This factor somewhat enhances the valuation of a risk, even when it is collectively carried.

made by a half unconscious application of a correct principle of value. It is easy to state this principle, and to show how the value of a risk would be computed if the calculation were made scientifically.

As a man acquires property, each increment is worth to him less than its predecessor. If a thousand dollars be taken as the unit of capital, the first unit that is acquired is the most useful of all. The second is of less importance, though it is still highly valued; and the tenth is, by subjective standards, worth less than any of the preceding nine.

How shall we estimate the injury inflicted on the man by the loss of a particular increment of capital? Clearly, by a similar calculation made in a reversed order. The last unit that has been acquired is the first to be lost. The final increment is to be treated as the first decrement, when the business begins to be unsuccessful. This unit, in the supposed case, is the least important of the ten. As the acquisitions of capital that have come to the man have benefited him successively less and less, so the losses that are supposed to follow hurt him more and more. A growing capital comes to be worth, to the owner himself, less and less per unit; and a dwindling fortune is worth more and more per unit. The harm inflicted by the destruction of one thousand dollars is comparatively small, that inflicted by the loss of a second thousand is greater, and the sweeping away of the last thousand hurts the man to a degree that is out of all proportion to the amount of wealth destroyed.

To measure the personal harm that is inflicted by the loss of a man's entire capital, we must gauge the importance to the man himself of each separate fraction of it, and add the figures that express the several measurements. If we use an ideal series of numbers to express the injuries that an owner suffers, as the different units of his capital are, one after another, swept away, we shall have a

basis for determining how large a gain he must count on annually if he is to expose himself to the risk of this personal harm.

Let us say that the loss of the first unit of capital that is sacrificed injures the owner to a degree that is expressed by the figure 1, that of the second to a degree expressed by 2, etc. The loss of the tenth and last unit of wealth will then harm the man to the extent of 10. In his subjective valuations, the sweeping away of all that he has will inflict on him an injury expressed by $1+2+3 \ldots$ up to 10, or by the figure 55.

If, now, there is just one chance in a hundred that, during the coming business year, the man's entire capital will be swept away, he must anticipate a gain of one per cent., not of the ten units of his actual capital, but of the fifty-five units that represent its importance to himself. He must during successful years make five and a half per cent. of his capital as a compensation for exposing it to the chance of total loss.

In the technical terms of modern theory the case is thus. The annual gain that figures as an offset for the chance of loss has, dollar for dollar, a subjective utility that is on a par with that of the final and least important unit of capital acquired. This gain should normally be large enough to offset the risk of a loss that is gauged by the total utility of the several increments of the man's capital. If the fraction one-hundredth represents the chance of loss, if the figure ten represents the amount of capital exposed to this danger, and if the number fifty-five expresses the total subjective value of the capital, the gain that is to be rated as an offset for the risk is five and a half per cent. of the capital, ten. Where risk is not thrown on an insurance company or lightened by any kindred device, it is carried for its subjective value as thus computed.

In actual business the different increments of capital

employed in one establishment are exposed to varying degrees of hazard. There is more danger that one thousand dollars will be lost than there are that ten thousand or a hundred thousand will be so. This fact needs later to be considered, but does not affect the principle that we are now establishing. When all related facts are taken into account, it will be found, as it has been found in the simple case just examined, that the carrying of business risks normally yields a return that is equal to the true actuarial value of the hazard. This value is determined by multiplying the fraction that expresses the hazard by the figure representing the total utility of the capital that is exposed to it.*

Who gets the net gain that in a term of years accrues to the risk-taker? Is it the *entrepreneur?* If so, this sum is a part of the profits of business, though it is not the whole. Does the sum go to the capitalist? If so, it is as completely distinct from business profits as is interest or wages. There can be no question to whom the amount actually goes, if we adhere to the mode of analysis that separates the functions of the *entrepreneur*, the capitalist, and the worker. There can hardly be a question that in a study of distribution this separation of functions is essential. The usefulness of a separate study of each of the three functions, and of the income attaching to it, is not lessened by the fact that one man usually performs more than one of them. Working is one thing, lending "money" is another, and hiring men and money and setting them at work is still another. The three functions earn three incomes different in kind; and to speak of the functionaries as though they were wholly different men helps to distinguish the parts that, in their different capacities, they play.

We have used the term *entrepreneur* in an unusually

* Gambling risks are not referred to in this paper. Where the excitement of risk taking becomes an end in itself conduct is modified accordingly.

strict sense, to designate the man who co-ordinates capital and labor, without in his own proper capacity furnishing either of them. Yet our eyes are open to the fact that the living man who performs this function has to do other things also. It is only in the one limited capacity that we have called that of the *entrepreneur* that the man is confined to co-ordinating the elements furnished by others. Here he is so confined. In performing this one function, he contributes to industry nothing but relations. He connects labor and capital with each other in his own establishment. He connects this establishment with others, and makes it do its part in the general industrial system. He becomes the owner of the products of this industry, as they are turned out, and sells them in the market for what he can get. In acquiring this ownership, he must pay all the costs entailed in creating the product; and among the costs to be thus defrayed is the entire sum made over to the capitalist as an offset for risk.

It goes without saying that the hazard of business falls on the capitalist. The *entrepreneur*, as such, is empty-handed. No man can carry a risk who has nothing to lose. If the business goes to ruin, it is the furnisher of capital who suffers; and it is he who, at the outset, counts on an offset for the danger. In the course of business he gets the offset: he receives the actuarial value of risk of personal harm to which he subjects himself. He gets this sum as a part of his gross interest. The *entrepreneur* pays it as a part of his costs. To the one the reward of risk is an income: to the other it is an outgo that must be submitted to before he can become the complete owner of the product that he is to put on the market. If there is a true profit in the case, it comes after this demand has been met.

It is now time to take into account the merging of radically unlike functions in the same actual man. In business an *entrepreneur* usually has to be, to a certain extent,

both a capitalist and a worker. He has to furnish some capital and to do some of the work of management, which, of course, is a kind of labor. It is the theory of insurance that throws light on the nature of this union of functions.

It is a matter of common knowledge that an *entrepreneur* cannot, by an ordinary method, borrow all of his capital. He would have to get a loan, for a more or less hazardous purpose, entirely without security. If a near relative were induced to lend the capital, the loan would be a partial gift. The amount representing the actuarial value of the hazard encountered would be given outright. If A, a father, loans to B, a son, fifty thousand dollars for a term of ten years, in order that an enterprise may be prosecuted, the total value of the risks encountered in the time may well equal a half of the amount so loaned. Twenty-five thousand dollars are virtually given to the young *entrepreneur*.

Here appears the importance of the fact above noted, that all parts of a capital are not exposed to equal danger. There is a larger chance that ten thousand dollars will be sunk than there is that fifty thousand will be so. An *entrepreneur* who has some capital of his own puts that capital into the position of greatest danger. If a loss is encountered, it falls first on him, and only touches the borrowed capital after his own is exhausted. There is some risk impending over the borrowed amounts; and it is this which is estimated when the rate of interest on the loan is determined. In his capacity of capitalist the man who is also the *entrepreneur* must charge himself a higher rate.

There is a further reason why the *entrepreneur* needs to discharge a part of the capitalist's function. In his own capacity he is a risk-maker. It is he who gets "money" from places of safe deposit, and puts it into forms of investment from which there is a chance that the owner may

never get it out. If, in his other capacity, the man who is the *entrepreneur* furnishes the wealth that is in the greatest danger of vanishing, as the business proceeds, he will not select a business of a kind that is needlessly hazardous.

The *entrepreneur* needs to be a manager, and to personally do some of the most critically important work that is done in his establishment. The managing worker is a risk-reducer. It is he whose sagacity and faithfulness are to combat incidental dangers as they arise. What perils may not bad management create? What figure would express the actuarial value of the risk encountered by capital if, at the outset of the enterprise, it were known that the director of the work were to be a tyro or a knave? What expression can overstate the necessity that the director's intelligence should be of the highest order, and his faithfulness established by every test? Adequate tests cannot, in fact, be applied by one man to another; but, if the *entrepreneur*, who is also a capitalist, is to do an essential part of the work of management, and has his own capital to especially risk in the operation, there is a guaranty that he will test himself with some care, and will not undertake a function for which he is unfitted. Overweening self-confidence may still work disaster; but the range of it will be smaller than it would be if the risk-maker and manager had only the capital of other men in his hands.

A personal union of the *entrepreneur's* function with a certain part of the functions of the capitalist and the directive worker is called for by these considerations. They would seem to favor the old-fashioned type of business establishment. They would of themselves give a certain advantage to the individual who does business on a comparatively small scale, and manages as much as is possible of it himself. They would favor partnerships of working owners, rather than corporations in which the owners are largely absentees. If, in the course of years,

corporations were exposed to perils not encountered by partnerships and by individuals in independent business, it is the corporate capital that would tend to disappear, and the other that would tend to survive. An influence of this kind is certainly at work; and, if it were alone and unhindered, it would refill the world with old-time establishments instead of stock companies and mammoth consolidations.

Why is it, then, that actual evolution shows just the opposite tendency? Why does business run more and more to the corporate form, and why do great companies seem likely to sweep the field clear of rivals? Is it the mere advantage afforded by size?

This is the common answer; but it is an inadequate one. Size does much. If we classify the dangers that beset an enterprise as external and internal, the large establishment has the advantage as against the perils that originate without; but it is exposed to peculiar risks originating within. Its arch-enemies may be of its own household. There is the director of a certain familiar type to be reckoned with. Will he plunder the company? Will he treat the property of his stockholders as the pool from which to fill his personal bucket? The guaranty that he will not do so is largely a moral one; but it is strengthened if the director is too heavily interested in the corporation to make the depredations profitable.

The merging of ownership and management, which is secured in the case of the individual in independent business, needs to be secured in some adequate degree, even in the case of corporations, if they are not to succumb to internal perils. By a harsh process of survival this result is in the end secured in many a company that was originally organized in a hazardous way. The wrecker may end by owning the plant of the victimized corporation, and from that time onward may manage it legitimately. There may still be depredations to be made on other

establishments; but they will at least be made in the interest of the company that makes them. The road through directorial theft leads onward to a *quasi*-honesty.

Yet with all the power that comes from size, and with all the virtue that there is in the merger of ownership and management, the rate at which corporations are growing is only half accounted for. What is the undetected reason for this growth?

Evolution usually gives good results. It is a rule of organic life that the best type survives, however harsh may be the process of survival. To the eliminated types the law is not beneficent; but to the animate world it is so. In the business field, evolution gives us efficient tools, fruitful methods, and, in every department, efficient men. Strong manual workers, deft artisans, faithful custodians of goods, and skilful accountants, do a larger and larger share of the labor of the world; and they bequeath their several gifts to descendants.

In the higher fields of enterprise and management the law works in a rapid way; and it operates sweepingly in the competition that takes place between different types of business organization. Of all the fields in which the struggle for survival is in process, the one in which a quick and beneficent outcome can most surely be counted on is that in which an assorted lot of business establishments, as organized on various plans, are testing their efficiency in a competitive struggle. The stamp of assured success in such a contest puts the excellence of a type of organization beyond question.

It must have good risk-makers in its *entrepreneurs*, and good risk-reducers in its managers; but it must have, in addition to these, good loss-bearers in its capitalists. In this last fact lies the unanalyzed influence that favors corporations. It is decisively felt by practical men, but has not figured much in economic theory. Business losses need to be located where they will do the smallest amount of personal harm.

Fire insurance companies illustrate this principle. In view of one of their effects, they may be said to be created for the purpose of increasing the number of buildings destroyed by fire. "Insure your shop, and then watch it with less care," is the rule for honest men. "Insure your building, and then burn it," is a rule that is not unknown. The companies that carry the risk of fire must get, in the form of premiums, (1) enough to pay the true value of the normal hazard, (2) a sum covering the expenses of carrying on the business, and (3) an amount that will offset the abnormal hazard created by the laxity or dishonesty of insured owners. The latter two of these sums constitute an additional loss incurred by the community as a consequence of the insurance system. They represent an extra amount of goods put out of existence by reason of the fact that the owners of property transfer to others' shoulders the burden of risk from fire. Yet insurance is profitable. It creates value, in the true sense of that term.

It is in locating losses where they will fall on marginal increments of capital that the secret of the success of the insurance business lies. Enlarged losses, taken from the final and least important increments of the capital of many men, are borne more easily than the smaller losses that, in the absence of a system of insurance, would fall crushingly on a few men. The community knows that it is paying in premiums far more than it would otherwise lose by fire; and it rejoices, notwithstanding. The mass of its goods is smaller, but the personal service which they render is greater, by reason of that pooling of losses by which the marginal increments of many men's capital take the losses of business. It means a continuous and diffused burden rather than a concentrated and sweeping destruction.

It is the application of this principle in another connection that is now important. If all risks could be

distributed by means of insurance companies, the old-time partnership and the man in independent business would have a greatly improved chance of holding their own, as against corporations. The system of fire and marine insurance, as now established, is the salvation of many a small establishment. Losses by fire and shipwreck are daily occurring that would crush small proprietors if they fell upon them at once, instead of coming in the form of the small annual drain represented by insurance premiums. The paramount fact, however, is that the anticipation of such losses would keep the small proprietors out of the business field. It would act as a check on initiative action, and in this action lies the essence of social progress. The corporate form of business organization makes it possible to more widely distribute business losses than is practicable under other forms. The suppression of insurance companies would force even well-established business more and more into the corporate form. New business is more powerfully impelled in that direction by a similar influence.

Dangers from fire and tempest beset old and new establishments alike; but the new ones have special dangers to encounter, and against these insurance companies do not provide. They are the dynamic risks of business, or the perils that are incident to changes in the system. Static risks impend over a business system that retains from year to year what may be termed its structural form.* The danger of fire is static, since it would continue though no new product were ever put on the market, and though no new process of creating a product were ever introduced. The uncertainties that attend the introduction of a new process are dynamic, since they would have no existence if industry were to continue in a stationary state. There is a chance that the process may be mechanically defective:

* For a fuller statement of the distinction between static and dynamic conditions, see the issues of this *Journal* for April, 1891.

it may not create the desired commodity, as the projector of the enterprise expects. If, on the other hand, the dynamic change in question consists in offering some new commodity for the comfort or the pleasure of consumers, the public may fail to give to it the expected welcome. There is a chance that all that is invested in the enterprise may be sunk; and there is also a possibility that it may all return with a fourfold increase.

Now, by the projectors of the enterprise, the actuarial value of the risk has to be offset against that of the prospect of gain; and only if the latter exceeds the former is there an *entrepreneur's* profit in the case. The risk, however, impends over the capital used, and the offset for it goes to the owner of that capital. Over and above that offset is the return accruing to the projector.

Now, the value of the risk, as we have seen, has to be subjectively computed. It depends on the amount of personal harm that will be done if the enterprise fails. If one man loses his all in the venture, the harm is great: if many men stake their marginal funds and lose them, the damage done is far smaller. The division of initial risks reduces their actuarial value; and this fact makes it possible to realize an *entrepreneur's* profit from many an enterprise in which, if the capital were held by a single owner, the entire prospect of gain would barely offset the risk of disaster. Reduce by any means the subjective value of these risks of initiation, and you enlarge profits in many departments; but the more essential thing that you accomplish is to multiply projects. You make it practicable to take the forward steps that are necessary in the evolution of a more perfect economic system.

We may note the operation of this principle in a concrete case. Let us say that it has occurred to some one that electricity stored in large batteries is an agent well calculated to be used in moving ships and boats. The weight of the batteries, which precludes as yet the use

of them in road vehicles, is in their favor on the sea, since it operates as ballast. It will cost ten thousand dollars to test the question. If one man has just that amount, and loses it in making the test, the effect is to injure him, if our early illustration be used, to an extent of fifty-five units. If ten men contribute a thousand dollars each, and lose their contributions, the harm done to them all is only expressed by the figure ten. If, now, the gain, in case of success, will be fifty-five units, and if the chances of gain and of loss are even, a corporation with ten shareholders can make a handsome *entrepreneur's* profit from the venture. The individual, if he must personally carry the risk, will do well to let the experiment alone. For him there is no margin afforded above the value of the hazard.

The initiative work is becoming more and more essential, if the multiplying race of men is not to suffer for its fruitfulness. More and more important, therefore, will be hereafter the devices that reduce the true value of the risks of initiation. The reduction insures a profit, indeed, to a certain class; but the more essential effect of it is to stimulate the initiative process. Can we test the value that the community puts on this effect? Note what it endures, in order to get it; count the incidental costs of corporate growth. Proverbially soulless agents in power, massed wealth that corrupts law-makers and menaces the State, management preying on its own clientage,— such things are borne when the enduring of them means a vitalizing of industry by quickened progress. A more dynamic quality imparted to the economic system,— this is a result for which any price will be paid. It is gained whenever we reduce the initial terrors of business enterprises.

J. B. CLARK.

THE BANK-NOTE QUESTION.

THE question as to the continued existence of bank-notes as a part of the currency of the United States has recently entered upon a new phase. For several years past the majority of our people and of their political representatives have observed with great equanimity the gradual disappearance of national bank-notes, and the approach to the point where the trifling profits upon circulation and the extinction of the national bonded debt would leave no paper in use except the notes and coin certificates of the United States. This surrender of the whole field to government paper, the result of circumstances, but not designed by law, has been defended, moreover, on the ground that the national Treasury ought to receive whatever profits or convenience may be secured from the issue of credit as a substitute for money, and that the right of issue granted to corporations of any class is an unreasonable addition to their many privileges. We now have the proposition repeatedly brought forward in Congress, discussed and supported in the public press, and embodied in the platform of one of the great political parties, to repeal the tax of ten per cent. on the notes of banks and bankers carrying on business under the laws of the several States, and thus to admit to the field of circulation the issues of a vast number and variety of local institutions, which have been excluded therefrom by the practice of the last twenty-five years. In short, the present form of the bank-note question appears to be, not whether the whole right of issue shall lapse into the hands of the national government, but whether that right may not advantageously be extended to everybody whose exercise of it is admitted by the varying policy of forty-four local legislatures.*

* Bills for abolishing the tax on notes of State banks, or for equalizing taxation on the notes of national banks and of State banks, have been introduced: —

A sudden change of ground like this, involving a proposed revolution in our system of paper currency and in much besides, may betoken a decisive and durable alteration in the lines on which the bank-note question is to be discussed hereafter; or it may only be one more instance of the facility with which large numbers of our people are ready for a brief space to seize upon the last new idea,— especially in matters of finance. That the idea is now to be found in a political platform proves nothing, we are warranted in saying, except that in the judgment of some persons it has a present hold upon some important classes or sections, and is likely to retain that hold until November. But, whether durable or transient, the change of ground is too important to be neglected. In either case, it probably has its origin in real wants felt keenly in some parts of the country, though perhaps misunderstood. And in either case it is interesting to inquire whether the remedy proposed is safe and appropriate to those wants.

The legislation under which banks are now organized under State authority is, in some cases, the same that was in force prior to the establishment of the national system, in some cases has been revised, and in others is of quite recent origin. In some cases,— as, for instance, in some of the New England States and in New York,— it is extremely elaborate; and in others, as in Missouri, Virginia, and parts of the North-west, it enters into comparatively few

1875,	H.R.,	by Mr. Riddle, Tenn.	1889,	H.R.,	by Mr. Henderson, N. Car.
1876,	"	Mr. Atkins, Tenn.	1889,	"	Mr. Dibble, S. Car.
1876,	"	Mr. Roberts, Md.	1889,	"	Mr. Richardson, Tenn.
1876,	"	Mr. Riddle, Tenn.	1891,	Sen.,	Mr. George, Miss.
1879,	"	Mr. Vance, N. Car.	1891,	H.R.,	Mr. Bland, Mo.
1879,	"	Mr. Buckner, Mo.	1891,	"	Mr. Wheeler, Ala.
1879,	"	Mr. Davis, N. Car.	1892,	Sen.,	Mr. George, Miss.
1882,	"	Mr. Gibson, Ga.	1892,	H.R.,	Mr. Richardson, Tenn.
1882,	"	Mr. Hutchins, N. Y.	1892,	"	Mr. Bland, Mo.
1884,	"	Mr. Dibble, S. Car.	1892,	"	Mr. McMillin, Tenn.
1886,	"	Mr. Chandler, Ga.	1892,	"	Mr. Cox, Tenn.
1886,	"	Mr. Dibble, S. Car.	1892,	"	Mr. Breckinridge, Ark.
1886,	"	Mr. Bennett, N. Car.	1892,	"	Mr. Harter, Ohio.
1888,	"	Mr. Dibble, S. Car.	1892,	"	Mr. Harter, "
1888,	"	Mr. Chandler, Ga.	1892,	"	Mr. Harter, "
1889,	Sen.,	Mr. Vance, N. Car.	1892,	Sen.,	Mr. Vance, N. Car.
1889,	H.R.,	Mr. Chandler, Ga.	1892,	"	Mr. Harris, Tenn.

details. In some cases, the grant of powers is wide enough to cover all banking functions, including issue, and in some it will be found that in the revision of statutes in the last generation the issue of notes has been prohibited. The provisions for regulating the operations of banks vary, from cases like that of Massachusetts, which maintains some restrictions so severe as to prevent the organization of any banks at all under State law, to such cases as that of New York, where a thoroughly organized State system is able to meet the national system at times on something like equal terms. Some of the States have their banking departments fully organized for the purpose of supervision: others have no organization beyond the requirement of returns to be made to the auditor or some other officer of the State. The provisions for returns and for publicity of operations are generally imperfect, and far below the standard of the national system, many States being content with an annual statement only.

The distribution of State banks under these circumstances is extremely irregular. In some States none exist: in others they are strong, and their number is rapidly increasing. But, if we take the statements collected and published annually by the Comptroller of the Currency, we shall find that their great strength is in the group of North-western States, in two or three States of the centre, and in a few of the South Atlantic and Gulf States.* It

* Of the 2,572 State banks covered by the *Report of the Comptroller of the Currency* for 1891, two-thirds may be grouped as follows:—

Wisconsin	91	Virginia	93
Iowa	122	N. Carolina	29
Minnesota	93	S. Carolina	19
Missouri	401	Georgia	34
Kansas	134	Kentucky	151
Nebraska	356	Tennessee	64
N. Dakota	51	Mississippi	54
S. Dakota	65		444
	1,313		

New York has 176, Pennsylvania 84, California 144, and the group Ohio, Indiana, Illinois, and Michigan have 196. The remaining 22 States have 215 in all. This account does not include loan and trust companies.

will also appear, however, that the capital of the State banks is not proportional to their numbers, but shows a much lower average per bank than the capital under the national banking system.* This is due in part to the general though not universal preference of large city banks for organization under the national system, and also in part to the great number of banks with small capital organized under State laws. The minimum of capital allowed by the national banking system being $50,000, the State systems in many cases set the minimum at $25,000, as in New York and Iowa; in others as low as $10,000, as in

*The following table, made up from the reports of the Comptroller of the Currency, is intended to show the recent growth in number and capital of State banks and national banks in two important groups of States. The returns given for State banks, being partly official and partly unofficial, leave much to be desired, and in the year 1884-85 only supply the figures for three States. It should be said, also, that, in the case of Kansas, the figures for the two earlier years probably include some savings-banks, the law of the State not drawing the line distinctly at that time.

[*Capital given in millions and tenths.*]

	State Banks.						National Banks.					
	1884-85		1887-88		1890-91		1884-85		1887-88		1890-91	
	No.	*Cap.*	*No.*	*Cap.*	*No.*	*Cap.*	*No.*	*Cap.*	*No.*	*Cap.*	*No.*	*Cap.*
Wisconsin	–	–	64	$3.8	91	$5.2	50	$4.4	57	$5.2	69	$6.8
Iowa	–	–	74	4.	122	6.4	122	10.1	129	10.2	141	12.1
Minnesota	34	$3.9	61	5.7	93	8.1	50	11.3	57	13.7	59	14.1
Missouri	187	13.	238	13.4	401	16.7	40	6.3	49	11.5	80	23.9
Kansas	54	2.1	177	6.6	134	5.8	60	4.	146	11.2	152	13.4
Nebraska	–	–	69	2.2	356	9.	63	4.8	104	8.4	136	12.8
No. Dakota	–	–	23	.6	51	.7	35	2.1	62	3.7	29	2.
So. Dakota	–	–			65	1.8					39	2.5
Virginia	–	–	64	3.5	93	5.8	24	3.5	25	3.8	33	4.3
No. Carolina	–	–	16	1.1	29	1.8	15	2.4	19	2.5	20	2.5
Tennessee	–	–	28	2.3	64	5.	33	5.	40	7.5	52	10.
Mississipi	–	–	14	1.1	54	3.3	5	.4	12	1.1	12	1.1

Missouri; and in some cases even as low as $5,000, as in Nebraska, Kansas, and the Dakotas. For the organization of banks with feeble capital, therefore, whether this is the result of inability to provide more or of limited employment for capital in the particular locality, the State laws often give an opportunity not allowed by the national system. That the demand for the establishment of small banks is increasing, especially in the West and South, is clear from the recent legislation of the States, and from the marked increase in the number of banks organized under State law.*

So far as the legislation of the several States still retains its provisions for the issue of notes, there is the same variety which existed before the Civil War. The issue of notes by banks incorporated under general acts, the issue by banks under special charters, the issue of notes by private bankers under State regulation, may all be found provided for in one State or another. In some cases provisions have been retained which contemplate the deposit of adequate security, and in others no specific security is called for. In the States which in 1861 suffered the most from the collapse of free banking systems based upon inferior securities, the sections relating to the issue of notes will be found generally, and perhaps in all cases, to have dropped out of the statutes in some later revision; but, so far as issue is still recognized by the States as a theoretically possible function of their banks, there is the same variety of method and even of purpose in the restrictions applied to it. In the event, therefore, of a general revival of State legislation upon this subject, there is nothing in such provisions as now exist, nor is there anything in the character of the other State laws respecting banks, to lead us to look for any greater uniformity of system than formerly. Opinions may differ as to the possible effect in all parts of the country of a more en-

* See note on opposite page.

lightened public opinion in enforcing the demand for the protection of note issues by sound legislation, but there can hardly be a difference as to the probability of great variety in the methods of protection to be adopted, and in their comparative efficacy.

It is clear that the present demand for rejection of what had by common consent been regarded as the most valuable characteristic of our national bank currency — its complete unity — cannot be made by any considerable part of our people except under the spur of some keenly felt demand. The sections where the present movement probably finds its greatest strength are those in which heretofore there has often been a strong tendency to favor the exclusive use of that simplest of all currencies, the greenback. The change of preference from one issue to countless issues, from notes having universal credit to notes limited in their use to a State or perhaps a county, has had some strong reason in the economic condition of the sections where opinion has thus veered. The sections concerned are agricultural; they are depressed by the low prices of their great products; they depend upon others for no small part of their manufactured supplies; and their people are in debt. In a vigorous statement of the condition of the South a few months ago, Hon. H. A. Herbert, of Alabama, traced the origin of this state of things to the system of federal taxation. The South, he maintained, has worked with incredible industry for fifteen years; but its gains have been steadily drained away by taxation, to be expended in other parts of the country, and in the end the South finds itself as poor as ever. Without discussing the question here raised as to federal taxes, and only noting that, if we accept Mr. Herbert's opinion as to their effect, the logical conclusion would be that the remedy should be sought in a reform of taxation and expenditure, and not in a revolution of the currency, we

remark here the same complaints as to insufficient means and pressure of debt which have come from the South during the greater part of its existence. The condition of much of the West and North-west has been described by Hon. M. D. Harter, of Ohio, in very nearly the same terms.* Those sections, as a whole, also feel the present stress of low prices, are large buyers and large debtors. Aside from the question as to federal taxation, they, too, are pressed, as they always have been pressed, by the need of more and more capital for the development of their abundant resources and the employment and support of swiftly growing populations.

Both in the South and in the West evils of this description have been experimented upon for years, without disclosing any cure except that which comes with the gradual accumulation of wealth in a mature community. Every form of currency has been tried by turns,— specie, paper, national, local,— with the sole result of showing that the economic *malaise* might easily be aggravated, but could not be cured. It has its origin in the fact that any country which is being rapidly taken up, and is therefore essentially new, whatever the age of its political fabric, is apt to need for present use more capital than it has had time or opportunity to acquire. As a whole, it is in debt; and, as individuals, its citizens are borrowers. This pressure to borrow is plainly not to be satisfied by dilution of the currency. Although the present need of an individual debtor may be satisfied by mere paper, the relation of the community, as a whole, to other sections and to the outside world in general, requires something more solid,— something as solid as the general standard. And, as now seems to be generally recognized, the pressure is not to be satisfied by an ampler currency for the country at large, however sound. Aside from the temporary effects

* For the speeches of Messrs. Herbert and Harter, made in Boston, June 13, 1892, see the Boston *Herald* of the following day.

of any sudden change in the general currency, alteration in its amount does not alter the relation which the sections under rapid development bear to the rest. They are still sure to require large supplies of capital, in one form or another, beyond their own ability to supply, and sure therefore to appear in the market as borrowers.

But, as has already been suggested, the individual's share in this general pressure is felt by him as a need for that which will pay debts, a need for currency, and so as a need for loans from banks or bankers in any form which will provide him with the means of present payment. The rapid multiplication of banks under State legislation is the natural expression of this necessity, on the part of the individual, of finding some means for making his hope in the future available as a present supply; and the opportunity is found under the State systems, because under them there is no requirement that any part of the capital of a bank should be invested at a rate so low as three per cent., and because, in other respects, the State systems are often freer from regulation and from disagreeable restrictions. But the tendency for an increase of banks under State legislation is only the recurrence in a new form of a phenomenon which has often appeared in the history of the farming States. Public opinion on the subject of bank credit has undergone many singular changes in those States. Some of them have at times encouraged the wildest schemes of paper currency, have at times rushed in despair to the opposite extreme of discouraging even sound banking, and again have relapsed into the old toleration of whatever can be passed from hand to hand. But at every stage the real effort has been the same, to supply themselves with capital beyond their possible accumulations,— the necessity under which any quickly developing and enterprising community must needs find itself. It is a real and even inevitable want therefore, and not a mere craze for expansion, which seeks satisfaction at the present time and stimulates the

call for a practical restoration of the right of issue to State banks.

Indeed, it may be added here that the increase of banking in the West and South has not hitherto been excessive, nor does it generally tend to excess now. Omitting from consideration the private bankers, as to whom there is unfortunately no longer any means of attaining even approximate information, the increase of national and of State banks together in these sections, in the last twenty years, has not more than kept pace with their general growth, and has fallen behind the growth of some of their leading interests. The natural spread of banking operations has apparently been hampered and held in check; and we should probably be safe in finding the obstacles to be the failure of Congress to encourage organization under the national system, which for some years has visibly checked the increase of national banks, and some reluctance of banking capital to organize under the liberal but still inferior State systems.

But there is an important distribution of banking facilities in progress, in addition to the simple expansion of their amount. Reference has already been made to the establishment, under State systems, of banks with capitals much below the minimum allowed by the national banking law. No doubt many of the banks thus established are below the minimum of safety. With their trifling resources, it is impossible that they should command for their service such experience and capacity as their operations, although on a small scale, really require in the interest of the community. And yet the increase in the number of such small banks, hardly to be distinguished from the smaller class of private bankers, comes from an obvious tendency to carry banking facilities farther and farther from the great centres and to open the way for their more general use by the community at large. In short, there is not only a movement of increase, but a movement of diffu-

sion going on, which is probably the result, not merely of the general pressure of debt in certain sections, already spoken of, but of a healthy desire to use more freely and widely than has hitherto been possible in sparsely settled communities the modern methods and agencies of commerce. The State systems afford an opening for this movement, and have therefore an importance in the business organization of the United States at this moment not always recognized in the more densely populated and wealthier parts of the country. With the quickened movement of commerce produced by the railway, the telegraph, and the telephone, an economic need for the wider distribution of the machinery of exchange is developing, which the smaller banks under the State systems satisfy,— not perhaps in the best manner, but still in an important degree. When a Western State provides, as Nebraska does by its act of 1889, that banks with a capital of only $5,000 may be established in towns having less than 1,000 inhabitants, we must recognize that for that community, under its conditions, the complete diffusion of banking is felt to be a necessity. In this respect, the sparsely settled States are attempting to secure, by the multiplication of independent banks, the same advantages which in England and Scotland have been obtained through the multiplication of branches by a limited number of banks.*

These considerations undoubtedly show that the State banking systems, in the present condition of the country, have an important sphere to fill; and they raise the question, moreover, whether the national banking system might not be adapted by judicious amendment to meet wants which it cannot now supply. Leaving aside altogether the conditions on which notes are issued, and re-

* The ten great Scotch banks have not far from 800 branches in all, carrying their operations into every village. A similar practice in England and Wales gives about 2,600 banks and agencies outside of the metropolis. Both in Scotland and in England there is a sharp competition over the whole field, so that even insignificant towns are apt to have more than one banker.

garding the national banks merely as banks of discount and deposit, it would seem that this might easily be done. The smaller banks, especially, would be put on far more equal terms if they were relieved from the present useless obligation of a relatively heavy investment in United States bonds. Moreover, the greatest possible diffusion of banking facilities, under an admirably guarded system, might be secured if the establishment of branches were encouraged and facilitated by law. That, in the present state of opinion, the branches of a central bank would have to contend with some local jealousies is probable; but any real improvement in commerce or finance is tolerably sure to make good its footing. It is obvious, also, that, if the multiplication of branches were once fairly recognized again in the United States as a natural method, as it has been in the past, it would be as available for central banks under the State systems as for national banks. For both alike it would have the convenience of making it unnecessary to provide a full board of directors for every establishment, large or small,— a necessity which is often embarrassing in small places,— since a local manager under the direction and supervision of a central board could often perform the duties for which a local board now has to be made up. For both alike it would tend to diffuse business risks over somewhat larger areas than at present, with a gain analogous to that which such diffusion brings in insurance; and for both it would be possible to apply banking capital at a given moment according to the unequal and variable needs of the different parts of any section covered by a given institution and its agencies.

But, besides a demand for the extension and diffusion of banking in the sections referred to above, there is also a pressure, felt more keenly by them, but also observed elsewhere, for greater elasticity in the paper circulation of the country. In the United States — as in other countries having great annual movements of agricultural prod-

ucts — there are tides in the demand for tangible currency for actual use. Increase or diminution of the volume of general exchanges in urban communities is readily enough adjusted by variation in the amount of the more subtle medium known as bank deposits; but the marketing of crops in many States by farmers remote from banks, and little accustomed to transactions through them, means a temporary increase in the use of money or its substitutes. No doubt the extension and general diffusion of banking will finally minimize this increase, as it does in Great Britain, where the annual tide of tangible currency is moderate in its amount, although clearly visible in its flow; and probably the smaller banks in the North-west do much to meet this necessity for an expansible medium. At present, however, the want is serious, notwithstanding the heavy shipments of currency annually made in the harvest months from the financial centres. With this regularly recurring demand for an elastic medium, the United States have for years been content to have a singularly rigid system of paper currency, approaching year by year closer and closer to the condition of absolute inflexibility. The trifling gain made by the government from the issue of treasury notes has been treated as a complete offset to the vastly greater loss caused to the people at large, by their inability to use credit currency at the times and in the forms which our immense domestic commerce requires. Any reaction from this narrow conception of the public interest as something measured by the footing of a treasury account is a hopeful sign; and it is probably to the long-felt need of some elastic quality in our currency beyond that offered by the export and import of metal, that much of the existing desire to find some terms on which State bank-notes can be issued is due. That notes issued by banks in response to a commercial demand for loans, and redeemable at sight in specie, are in general the most convenient form of elastic currency, and the most quickly

responsive to the needs of the community, is recognized, That such notes are the form of currency best adapted to meet the tidal demand referred to above seems to be clear. But to make their issue safe, to avoid the needless rigors of the national banking system and not to lose its palpable advantages, is the problem.

Of the solutions offered for this problem, looking to the renewal of issues by State banks, two now seem to invite special attention: first, the proposition to simply repeal the ten per cent. tax which has excluded State bank issues from the field since 1866; and, second, the proposition to allow notes to be secured by the deposit of a very wide range of securities, and then to extend the right of issue, upon terms not settled, to all banks, State or national.

The naked proposition to repeal the ten per cent. tax must be treated as, in fact, a proposition to return to the state of things existing before the war. It is vaguely said. indeed, that such a return is now impossible; that no State would consent to the issue within its borders of unsound notes; that it is an insult to the intelligence of the State legislatures to suppose that any of them would be less scrupulous than Congress in providing for the absolute security of every dollar authorized by it. But all this confident assurance is unsafe ground for legislation. The paper currency of the country is too important to be left for its regulation to our faith in human nature alone; and though we may hope, or even believe, that the past will never return, it is well to be admonished by experience. Trust as we may in the universal desire of the State legislatures to keep on the solid basis of hard money, the repeal of the tax would indisputably open the door for evils which were rife only a generation ago, and were no worse than those threatened within that period by popular crazes over large sections of country. That the loss, in case of bad or mistaken local legislation, would be local, as

is sometimes urged, is not to be taken for granted. On the contrary, with the present close commercial network covering the whole country, it may be fairly assumed that injury to any State by reason of a vicious local currency would mean injury to others also, and that in this respect, as in others, all are concerned in the welfare of each.

At its best, therefore, the simple repeal of the ten per cent. tax means the substitution of multifarious issues for the uniform currency of the national banks. This follows as a necessity if note issue is left to local legislation, the agreement of legislatures upon a uniform type of bank-note and upon uniform conditions of security being as impossible as their agreement upon any other matter of public concern, with the added difficulty that with respect to banking the real or supposed interests of the different local constituencies are notoriously at variance. Federal supervision of issues made under the authority of the States is sometimes hinted at, but can hardly be said to be distinctly proposed. Indeed, it would probably be far from satisfying the wishes of those who urge the simple repeal, their object being apparently to secure something far more free, flexible, and responsive to local opinion than any federal regulation would allow. But, however this may be, the notion of a federal control of issues made by State corporations acting under the laws of the States presents legal and constitutional difficulties grave enough to authorize us to lay it aside until some distinct scheme for establishing such control is formulated.

Looking forward, then, to a state of things in which each State should have its own system of issue again, with a possible uniformity among the notes of all banks in any one State, we must contemplate the introduction of a bank circulation of unequal value in different parts of the Union. The uniform value which national bank-notes have in every State — the quality which was relied upon

from the start as a chief recommendation of the system — comes from the universal knowledge that all essential conditions affecting one note are like those affecting any other, and from the uniformity of type which spares the receiver of bank-notes the trouble of even reading the name of the issuing bank. It may even be doubted whether the engagement for redemption at the Treasury gives them any considerable addition of credit, or has any practical effect in increasing the confidence with which they are taken at a distance from the place of issue. The fact that one note is substantially like another in all essentials and is receivable in payment by any national bank in any part of the Union, secures absolute uniformity of value and ease of flow in circulation. But this advantage is necessarily abandoned, when the conditions of issue and the degree of ultimate security vary from State to State and become matter of inquiry whenever unfamiliar notes meet the eye,— possibly matter of special knowledge, attained by experts only. The rich experience of 1850–60 showed that even notes of unimpeachable strength found some resistance to their circulation, and so lost something of their value, when far from home. The dealer in uncurrent money in those days was a well-recognized figure in large cities, dealing not necessarily in bad bills, but in bills not current on the spot, and therefore subject to discount. Inequality of value like this, even if it is the result of mere unfamiliarity and doubt affecting the notes of distant banks, is a defect in a paper currency, and a return to it would be a long step backward. Uniformity and instant recognition are nearly as important for the paper of the country as for its coin, and can only be secured by analogous concentration of control.

It is to be remarked here that the practical confinement of local issues to their own territory has been advocated, especially within the last few months, as an arrangement to be desired on its own account. Certain

sections, it has been contended, suffer for lack of sufficient currency, and their needs can be supplied by ample local issues, and this with all the more ease and certainty if such ample issues have only a restricted circulation. This is doubtless true on condition that the local issues are of inferior value, or, in other words, depreciated in comparison with the currency of the country at large. It is not many years since the whole country, indeed, had a local currency available for use only within the United States, and altogether cut off by its depreciation from the currency of the world. It is not probable, however, that, in contending for localized issues, any large number of persons would now seriously propose the establishment, or the possibility of establishing, ten, twenty, or forty local currencies, each with its own special scale of depreciation and discount. But whether such local issues can be established, and have the effect of insuring local abundance of currency, without depreciation, is a question which will be considered further in the latter part of this paper.

The proposition, then, to simply abolish the ten per cent. tax, or by any other process to remit the control of note issue to the several State legislatures, appears to the present writer to destroy the security of the bank-note by opening the door for abuse and mistake, and to sacrifice the immense advantage of a currency of uniform value afforded by the national bank system. We have, then, to consider next the proposition to widen the range of securities on which the issue of national bank-notes is allowed, and to extend the right of issue to all banks, whether State or national.

This second proposition may be taken most conveniently in the forms in which it has been stated at different times by Hon. M. D. Harter, of Ohio. It contemplates, in the first place, the admission of many varieties of first-class

securities, as well as the bonds of the United States, as the basis of an issue of notes, on the general ground, no doubt, that the securities which the community finds to be solid enough for the investment of trust funds and of other moneys requiring absolute safety, are also solid enough to be held as a part of the protection required for bank-notes. In Mr. Harter's own statement of this plan,* long considered and carefully weighed as he assures his readers, he proposed to admit State, county, city, and railway bonds. In a bill for similar purposes, to which he has more recently given his support,† State and county bonds are omitted from the list, probably on the ground of some practical difficulties of discrimination between the good and the doubtful, and, possibly, in view of some difficulties in the way of enforcing payment in case of default. In both forms of the proposition, the listing of the bonds for five years upon the stock exchange of some large city, the maintenance of their price at a premium of not less than five per cent., and the steady payment of interest, the obligation for which must be expressly on the gold standard, are among the conditions to be observed, in order that bonds may be deposited by any national bank desiring to issue notes. So far, then, the proposition is in the line of others which have been suggested in the last few years, but for some reason never thoroughly investigated, looking to the enlargement of the present shrunken basis of the national bank-note system. In the method of extending the right of issue to State banks, however, the two forms of the plan differ radically. In its earlier form Mr. Harter proposed that the tax upon notes of State banks should cease, provided such notes are secured in the same manner as notes of national banks by bonds deposited with the auditor or treasurer of the State, and provided that each State should guarantee the payment of the notes issued by its own banks, the amount of notes to be issued

* The *Forum*, October, 1891, p. 186. † Boston *Herald*, June 14, 1892.

by State banks being determined by each State for itself, and the State banks not being required to redeem elsewhere than at their own counters. In the later form of the plan, after providing that the United States shall no longer guarantee the payment of national bank-notes,— a provision which is strengthened by the proposed abolition of the present five per cent. redemption fund,— it is simply proposed that the notes of State banks shall be subject to the same tax as notes of national banks, and no more.

In its later form, this plan, to which Mr. Harter has now committed himself, is not to be distinguished from the naked proposition to simply repeal the tax on State bank issues, leaving them to enter the field upon such terms of security and in such quantity as the State legislatures may severally prefer,— allowing the national banks to compete with them upon terms in some respects better than at present and in others worse. The unity and the uniformity of value of the bank circulation is to be destroyed, and our only security from unsound and depreciated local issues is to be found in the chance that all State legislatures may have learned equally well the hard lessons of financial safety.

In its earlier form, Mr. Harter's proposition appears to have been more promising. It held out the prospect of a uniform basis of security for State issues and national alike. No doubt the first attempt to throw into shape rules for its practical operation would have shown the necessity of placing both kinds of issue under national supervision and control. This would have given the system a strong resemblance to that embodied in the first national bank act (the act of February 25, 1863), for enabling banks, while still carrying on business under State laws, to issue national currency secured by the deposit of United States bonds in the Treasury at Washington.* This provision, which at the time answered the purposes neither

*See sections 61–64 of the national bank act of 1863.

of the friends nor of the opponents of the national banking system, was strongly disapproved by Mr. McCulloch, then Comptroller of the Currency* and deeply interested in extending the national system, was struck out from the revised act of 1864, and thus never took effect. At that particular juncture, when Congress had undertaken to obtain the whole field of circulation for a secured national currency, there was no place for such a half-way measure. At the present time, when the national bank-notes are being pinched out of existence by the failure of Congress to provide a wider basis for them, and when unlimited license for State issues is demanded as the alternative which is to save us from a paper currency depending for its amount upon the bare dictate of Congress, the opportunity for a measure which should place State and national issues upon the same footing and under the same guardianship would seem to be better. But Mr. Harter's proposition, while proposing the same basis of bonded security for all issues, falls immeasurably below the short-lived scheme of 1863, inasmuch as it lacks the unity of control which is the only possible guarantee for faithful and uniform enforcement. It is not surprising, then, that, having once set himself in opposition to national control, he should now have taken the further step of proposing to leave the regulation of State bank issues altogether to the discretion and prudence of the State legislatures.

In these propositions, which we have taken as somewhat typical, and in a large part of the current discussion of this subject, there is expressed, as we have said, a strong desire to provide for ample local currencies in particular sections. This is quite independent of any judgment as to the feasibility of widening the basis of the national currency and so rehabilitating that system of issue. It is urged as a defect of the national bank-note that it goes into circulation "with no localizing tendency, with no

* *Report of the Comptroller of the Currency*, 1863.

habitat, but endowed with every attribute tending to induce its centralization at the great financial cities and its removal from the country districts." * In short, it is objected that the bank-notes now have the quality of metallic money, and, like gold, will flow and accumulate as the current of internal commerce may require, having hardly more tendency to remain near the place of issue than coin has to stay in the neighborhood of the mint, except so far as their movements are arrested by redemption at the Treasury.

It will assist us in weighing the force of this objection if we first consider the movement of a currency exclusively of coin. It is distinctly recognized that a coin medium will not distribute itself with equal depth over sections of a country which differ in resources, industry, and acquired wealth. Notwithstanding the immense volume of transactions settled finally by exchange of products, the farming sections will steadily keep themselves bare of coin by their heavy purchases in anticipation of the future, and by their normally increasing payments for interest on the capital invested among them by non-residents. If they were less enterprising and progressive, payment in products might keep pace with their obligations; but their vigorous industry constantly impels them to push the use of their credit and to keep their stock of money low. As communities, they invite loanable funds by high rates of interest; but no transfer effected in this way gives anything more than a temporary relief from the dearth of coin. In the present stage of their development they have uses for goods which stand higher in their estimation than their uses for money.

In describing the unequal distribution of a medium supposed to be exclusively of coin, the language used runs of itself into the present tense, as though the imagined medium were really existent, because that which

* *Commercial and Financial Chronicle*, May 14, 1892, p. 782.

is true of coin in this particular is true also of a paper currency which is really redeemable in coin and is of universal credit. Such paper will serve the purpose of remittance and payment as well as coin, and will be collected and remitted accordingly, when the conditions of trade would cause coin to be so used. This will be effected directly or indirectly by the people themselves in making their necessary payments; and the convertible paper, like the coin in its distribution over the surface of the country, will be found in greater depth at the financial centres, because it is there that payments are due, and because, under existing conditions of supply and demand, payments, if made in products alone, can only be completely so made when the local currency is at the mimimum quantity. This state of things, which we believe is also as well recognized as the inequality with which coin alone would distribute itself, is not to be remedied by raising the general level of the supply of convertible paper in the country at large. Aside from the effect which might thus be produced on the movements of money between this country and others, the increase of the general mass would only temporarily change the relations of the farming sections to others, even if the whole addition were first to come into circulation in those sections. Their industrial conditions would still cause them to part with all but their quota of the increased amount, and they would soon be found in possession of only their customary proportion of coin and paper, and subject to the same inconveniences as ever.

But let us now suppose that, instead of a redeemable paper having universal credit, each section uses a redeemable paper having only local credit, having a "habitat," therefore, and certain to circulate only within or near the State in which the issuing bank is established. Is it not certain that, if the trade relations of an agricultural section are such as would draw away from it coin or its

paper of universal credit, if such a medium existed, they will now equally draw from it coin or legal tender paper, these being obtained by sending in bank-notes for redemption? The bank-notes are not themselves available as a remittance; but, if redeemable, they can instantly be turned into that which is available. This would leave a really redeemable local currency in the same scanty condition, and for the same reasons, as a medium of national credit would be under the same circumstances. We may, indeed, suppose that the local banks, the issuers of currency, continue to issue notes in place of those which are redeemed, and attempt thus to raise materially the level of paper in their neighborhood. In that case, their vaults become the ready source from which gold may be drawn for export from the section and the relative cheapness of gold in the section gives a motive for its export, either to pay for fresh purchases of goods or for use in other money markets. In short, so long as the redemption of paper is real, the restricted area of its circulation will not supply the means of raising the level of a local currency permanently above the mark which is settled by the normal course of payments to and from the State or section concerned. It is true that, if the redemption is not real, if the paper is openly or disguisedly inconvertible, it may be heaped up within the given area to an indefinite amount and with a corresponding depreciation.

The question, then, whether the restoration of the State bank issues and their regulation at the pleasure of the States is to be followed by real specie payment by State banks or by suspension, is of critical importance; and it may be doubted whether it has been faced squarely by those who advocate such issues as a source of locally abundant paper. But here, after all, would seem to be the kernel of the whole question; for, on the supposition that specie payments are to be maintained everywhere,— as most of the advocates of State issues must be supposed

to intend,— the proposed change must be futile for its avowed purpose; and, if suspension is to follow or to be risked anywhere, the measure is an abandonment of that solid ground of hard money which our people, after a long and bitter experience, finally reconquered under the resumption act of 1875.

In this discussion the varied political aspects of the question before us have had hardly a passing glance; and it is not worth while to enter upon them now, except to notice the frequency with which, in one form or another, the argument *in terrorem* is advanced,— the argument that the State bank issues should be freed from restriction lest a worse thing befall us. We are told that it is idle to hope for action which shall give a future to what is called the national bank monopoly, and that the State banks, therefore, afford the only chance for a credit paper issued in response to commercial demand; that State bank-notes alone can save us from complete surrender of the field to government issues; and that the restoration of local currencies is alone able to divert a large section of our people from the crusade in favor of the free coinage of silver. It may be true that there is ground for anxiety in one or all of these directions. But, if the financial history of the United States teaches any lesson, it is this: that, with the American people, sound doctrine and salutary measures are strongest when their advocates are fearless, and refuse to yield ground to the suggestions of timid expediency.

CHARLES F. DUNBAR.

COLONIAL TARIFFS.

In all the discussion to which the tariff question has given rise since 1789, little attention has been paid to colonial legislation on the same subject. Two facts may explain this omission: in the first place, there are no complete records to show what the early legislation really was, and the contemporary historians make little mention of the duties collected; and, secondly, the duties of the several colonies were almost exclusively for revenue, were much alike, were raised and lowered as the needs of the colonial treasury required, and seem to have been little different from other tax acts.

At any rate, the field is almost unexplored; and the facts here to be presented are such as have been gathered directly from the colonial laws and records. Unfortunately, as the collections of laws for some of the colonies are incomplete, this work can only be fragmentary. For Virginia, Massachusetts, and South Carolina, the colonial laws have been reasonably well kept, and the tariff history may be traced with some accuracy. The other colonies have poorer collections; and many acts are given only by title, so that it is much more difficult to follow the tariff legislation.* But there is enough

*Hening's *Statutes of Virginia*, Cooper's *Statutes of South Carolina*, the *Records of Massachusetts*, together with the *Acts and Resolves*, give, practically, all the legislation for those three colonies. The *Laws of New York*, 1691 to 1773, *Laws of Pennsylvania*, 1700 to 1802, Bacon's *Laws of Maryland*, 1637 to 1765, *Acts of the General Assembly of New Jersey*, 1702 to 1776, *Laws of the State of Delaware*, 1700 to 1797, *Laws of the State of North Carolina*, 1715 to 1790, enable one to trace the legislation of those colonies, though many of the earlier acts are given only by title. The Pennsylvania Laws refer to the Archives for those not printed. The text of many of the laws omitted in the compiled statutes may be found in early editions of the colonial laws, but these are far from complete.

For the other colonies the laws have not been gathered into any work covering the entire period. When the statutes were printed, all but those in actual force were usually omitted, and the older ones which were inserted often had no date, so that it is impossible to form a complete outline of the legislation in Rhode Island, Connecticut, or New Hampshire.

The *Journals of the New York Assembly* and the *Journals of the Votes and Proceedings of Pennsylvania* give some laws, not all, some discussion, and a few petitions; and for the later colonial period they give the treasurer's reports. The *Massachusetts Archives*, 122 to 125, contain the Treasurer's reports from 1692 to 1695, but there are numerous breaks. The New York Treasurer's and Collector's books are preserved, but I have not yet been able to examine them. How many of the financial records of the other colonies are preserved I do not know. None of them have yet been printed.

material to show that almost every colony levied imposts, a few of which developed into what may fairly be called tariff systems.

In several of the colonies the tariff acts were among the earliest attempts at financial legislation. Indeed, it is possible to go back even further, and find provisions for imposts, customs, or duties in the charters establishing governments in America. The charters of most colonies were quite similar, and permitted much freedom. That of Virginia may be taken as a type of all.* It laid a duty of 2½ per cent. on all goods imported by British subjects and 5 per cent. on all imported by foreigners. Food, clothing, arms, implements, and other necessaries might be sent from Britain to Virginia free for seven years. The proceeds from the duties were to be applied to the support of the colony for twenty-one years, and were then to revert to the king. The colony was given the privilege of imposing other duties if it thought best to do so. After the navigation acts were passed, all the charters specially stipulated that the colonists must obey the acts and pay the ordinary duties due from English subjects. In the charters of Carolina,† Pennsylvania,‡ and the other proprietary provinces, the proprietors were given authority to collect imposts and subsidies for their own use; but they were to be "reasonably assessed by and with the consent of the free colonists."

Of the duties imposed by charter or by acts of Parliament this article will not treat. They have been described by many historians, who agree that as revenue measures they were failures.§

The discussion here will be confined to the imposts which were assessed by and with the consent of the free colonists. The principles of taxation which governed them are, perhaps,

* Hening's *Virginia Statutes*, i. 63.

† Cooper's *Statutes of South Carolina*, i. 27. ‡ *Votes of Pennsylvania*, i. 22.

§ Many pamphlet writers and most historians refer to the smuggling and evasion of duties. Greenville, in a tract printed in 1765, *The Regulations lately made with respect to the Colonists Considered*, says (p. 57), "The North American colonies do not contribute to the national expenses by taxes raised there more than £700 or £800 per annum." "The average for all the colonies for thirty years is not above £1,900, while it costs £7,600 per annum to collect them." Also see Bancroft, ii. 83 and 243. Lecky, *History of England in the Eighteenth Century*, iii. 303. (Edition of 1882 in both cases.)

of more interest to us than are those which determined the action of British Parliaments, and have certainly been much less discussed. Unfortunately, the "principles of taxation" which influenced the colonial legislators can be learned only from the laws which they passed. No reports of their debates, no contemporaneous newspaper discussion or leading articles, throw light upon the text. To know what was done is much: knowing "what," we can frequently infer "why." In a few instances our conjectures are aided by preambles to acts, or by petitions asking for protection or for freedom from duties. But there is so little side light to be obtained that in this article only a plain statement of the facts will be attempted, leaving the determination of principles to future work and a more mature study of the systems of taxation and the general financial condition of the colonies.

The bounties given and monopolies granted to aid or stimulate various industries in the colonies have a close and important bearing on the protective features of the colonial tariffs, and are of more interest to the protectionist than are the revenue tariffs which will be here discussed; but they, too, must wait their time for full treatment.

The temporary or experimental measures and the few instances of protective and retaliatory legislation which are to be found can hardly be woven into any connected narrative, but are of sufficient interest to deserve notice. For this reason I shall sketch briefly the more important acts of this class before beginning with the regular tariffs.

The first tariff of Massachusetts deserves a place at the head of the list, both because of its priority in time and its purpose, which was "to prevent the immoderate expense of provisions brought from beyond the sea." This was to be done by a tax, but not according to the modern theory of cheapening goods by tariff taxation. The plan was to discourage importation, and to keep down expenses by diminishing consumption. To do this, it was ordered "that whosoever shall buy or receive out of any ship any fruit, spice, sugar, wine, strong water, or tobacco, shall pay to the treasurer one-sixth part of the price or value thereof; and every person who shall buy or receive any of the said commodities with intent

to retail the same to others shall pay to the treasurer one-third part of the value or price thereof."* These duties were partly repealed the next year, and entirely abolished in 1638.

Almost thirty years later Virginia passed a similar act for similar reasons, though health and morality, as well as expense, were regarded by the Virginia legislators. Their purpose in passing the act is well expressed by the preamble, which reads: "Whereas the excessive use of rum hath by experience been found to bring disease and death to divers people, and the purchasing thereof is made by the exportation and unfurnishing the country of its own staple commodities," therefore, "it is enacted that whatever vessel, after March 1, 1663, except such as belong wholly to inhabitants of Virginia, brings in any rum or sugar, shall not unload the same except at ports appointed, shall enter the quantity, and pay for every gallon of rum 6*d.* custom, and for every pound of sugar 1*d.*, before any part of it may be sold."† This act suffered the same fate as the first liquor duty of Massachusetts. It was in force only two years when it was repealed, "because the duties were difficult to collect and obstructed the trade of the country." It was twenty years before a regular system of liquor duties was adopted in Virginia, so that it is not probable that this early act had any influence in fixing the rates of the later one.

Turning to the protective acts of the colonies, we find that they are not numerous, but that such as were passed show there was no hesitation in granting protection to any industry or in any way which promised to prove beneficial. There were almost no manufactures to protect, and therefore the duties laid on manufactured goods were for revenue only; but each colony encouraged its own agriculture, sometimes by prohibiting the importation of commodities from other colonies and sometimes by duties.

As early as 1652,‡ "to uphold her own staple commodities," Massachusetts prohibited the importation of malt, wheat, barley, biscuit, beef, meal, and flour. Virginia prohibited the importation of tobacco, especially from North Carolina, on the

* *Records of Massachusetts*, i. 186. † Hening's *Virginia Statutes*, ii. 128.

‡ *Colonial Laws of Massachusetts*, 1672, 175.

ground that it was of inferior quality.* Several colonies would not allow the importation of horses or cattle, sometimes because they were thought to be of inferior size or breed, but oftener because the home supply was too great.† Maryland maintained discriminating duties against provisions and liquors from Pennsylvania. The regular liquor impost was 3*d.* per gallon, while Pennsylvania liquors were compelled to pay 9*d.*‡ Pennsylvania did not allow the importation of tobacco from Maryland, because this discouraged her own planters.§

The clearest case of retaliatory duties is found in an act of Massachusetts passed in 1649.‖ It was occasioned by a duty which Saybrook had imposed on goods coming from Springfield in order to maintain a fort at the mouth of the Connecticut River. Boston thought this unjust, and tried to get the duty repealed. Failing in this, an impost was levied on all goods from Connecticut, New Haven, and Plymouth. This had the desired effect, and the next year the obnoxious duties were removed.

Virginia also established retaliatory duties, but apologized for imposing them. The act states "that Virginia vessels are compelled to enter and pay fees before trading in Maryland ports. This is unneighborly, but Maryland vessels must do the same here until her laws are repealed."¶

If Massachusetts could not loyally support the navigation acts, she could show a willingness to discourage their violation, and at the same time to gain a revenue for herself by imposing double duties, both specific and ad valorem, on all goods which were not imported directly from the place of their growth. By way of protection to her own commerce, she also imposed double rates on all commodities brought in by inhabitants of Rhode Island, Connecticut, and New Hampshire. Still stronger encouragement was given to Massachusetts shipping by an impost of 5*s.* per hogshead on all molasses and 60*s.* per hogshead on all rum imported by foreigners.

* Hening's *Statutes of Virginia*, ii. 445.

† Bacon's *Laws of Maryland*, 1761, Act IX. Hening's *Statutes of Virginia*, iii. 27. Cooper's *Statutes of South Carolina*, ii. 164.

‡ *Maryland Laws* of 1715, 88 and 108.

§ *Duke of York's Laws*, 243.

‖ *Records of Massachusetts*, 182 and 269.

¶ Hening, ii. 446.

These rates were laid "because foreigners have been bringing in great quantities of rum and molasses, which takes away trade that our merchants carried with great profit, though they paid high charges for permission." The discriminating duties were on the statute books of Massachusetts from 1730 to 1743. The double duties on goods not imported from the place of their growth were first imposed in 1715, and were continued till 1774.*

In the New York tariff of 1695 the same provision was made for double duties on goods which had been reshipped.† This was repeated in some later acts, but how long it continued I have not ascertained.

During the early colonial period there were export duties on furs, provisions, lumber, staves, shingles, tar, and fish; but these were mostly temporary and for revenue purposes. Connecticut, however, seems to have developed her export tax upon lumber into a system of high duties, designed to prohibit exportation, that in after years she might not be destitute of building materials.‡

Protection of another kind was sought by at least three of the colonies about 1730. Criminals and paupers seem to have been as undesirable then as now. The measures taken to keep them out afford an instance of the influence which legislation in one colony had in shaping that of another. Pennsylvania led the way as early as 1722 with a duty on imported servants. In 1729 the preamble of an act for preventing the importation of convicts and paupers gives the following reasons for its existence: "Whereas many persons trading into this province have, for lucre or private gain, imported, sold, or disposed of, and daily do import passengers and servants into this province who by reason of age, impotence, or idleness, have become a heavy burden and charge upon the inhabitants thereof; and likewise do frequently import divers persons convicted of heinous crimes, who, after their coming into this province, do often commit many felonies, robberies, thefts, and

*The act of 1715 may be found in *Massachusetts Acts and Resolves*, ii. 10, that of 1730 in ii. 559.

† *Acts of the Assembly of New York*, 1691-1718, pp. 204.

‡ *Acts and Laws of Connecticut*, 1784, 245.

burglaries, to the great hurt of his Majesty's good subjects trading to and inhabiting the same." A duty of £5 is then laid on each convict or pauper imported, and the importer is required to give bond to insure the servant's good behavior for one year.* In 1730 New Jersey passed a similar law with exactly the same preamble, and in 1739 Delaware did the same.† These laws roused opposition in England, and were finally disallowed, but not till after the three years in which they could be legally set aside had passed. The Pennsylvania authorities refused to acknowledge the right of the king to annul a law which had stood more than three years. The controversy and correspondence on this question continued till about 1750, and seems to have ended by allowing the colonists their own way; for the law was again enacted in 1751.‡

Space forbids further mention of the disconnected and less important acts of this kind; and we pass, therefore, to the consideration of the imposts, customs, subsidies, or duties which may properly be called tariffs. These may be classified under four heads: I. Tonnage duties, or taxes on shipping; II. Export taxes on tobacco; III. Import duties on slaves; IV. The regular tariff schedules, in which wines and liquors were the most important items.

I. The tonnage duties were more general than any other kind of colonial imposts. In Rhode Island and New Hampshire they seem to have been the only duties; and there were not more than three colonies — Georgia, New Jersey, and Delaware — which did not lay a tax on shipping. The powder duties, as the impost on shipping was first called, are also the earliest of any duties imposed by a colonial assembly; and they were continued by most of the colonies until the Constitution transferred to Congress the power of levying imposts. 1631 § is the date of the first powder duty and Virginia the colony which imposed it. The text of the act is not complete in Hening's collection, the amount of powder to be paid being left blank. But the act of 1632 provided that every ship should

* The Pennsylvania acts are found in *Laws of Pennsylvania*, printed in 1742, pp. 350, 392, 532.

† *Acts of Assembly of New Jersey*, pp. 84. *Delaware Laws*, pp. 166.

‡ *Pennsylvania Colonial Records*, v. 66, 499, 550. § Hening, i. 176.

pay one hundred pounds of powder and ten iron shot for every one hundred tons burden.* These are about the average rates imposed in all the colonies. In some the rate was only one-half pound of powder, while in others it was two or three pounds per ton. After money became more plentiful, the powder duties were commuted into cash payments ranging from sixpence to one or two shillings per ton, according to the amount of depreciation in the provincial currency.

The earliest dates at which I have been able to find powder duties for the several colonies are, Massachusetts,† 1645; Maryland,‡ 1661; Pennsylvania,§ 1683; South Carolina,‖ 1686; New York,¶ 1709. For the other colonies the records at hand do not enable me to determine when the first duties were laid.

The tonnage dues of Virginia and Maryland were made perpetual, and, with the export tax on tobacco, furnished a permanent source of revenue, rendering the governor independent of the Assembly and the people. In 1692 the Maryland Assembly revoked the tonnage tax which had been granted to Lord Baltimore, and gave as their reason for so doing the failure of the proprietor to keep the colony in a state of defence, as he had agreed to do.**

The king, however, decided that the grant was irrevocable, and that Lord Baltimore should continue to collect his 14*d.* per ton, which in 1754 amounted to $5,000.††

The preamble to the act laying the first powder duty in South Carolina is worth inserting, because it shows clearly what the powder was wanted for, and that the need of it was urgent. It reads: —

> Whereas the subjects of the King of Spain have, several times lately, in the most barbarous, inhuman, and hostile manner, invaded his Majesty's subjects, inhabitants of that part of this province south-west of

* Hening, i. 192. † *Massachusetts Records*, ii. 107.

‡ Bacon's *Laws of Maryland*, 1661, Act VIII.

§ *Votes of Pennsylvania*, i. 165. ‖ *Statutes of South Carolina*, ii. 20.

¶ *Acts of Assembly of New York*, 1691-1718, 97.

** *Maryland Archives*, viii. 361, Bacon's Laws of Maryland, 1692, Act XVII.

†† Bancroft, ii. 396 (Edition of 1882).

Cape Fear, burning our houses, killing our stock, and destroying our provisions, murdering and making prisoners several of his Majesty's good subjects, there peaceably settled under this government; and whereas it is thought absolutely necessary, in order for the future safety and defence of his Majesty's subjects and of all ships and vessels trading to and from this province, that there be a public store of powder always in readiness, therefore, from the date of the publication of this act, every ship-master coming into any part of this government shall make a true entry of the burden and tonnage of his ship, and pay for every ton one-half pound of good, clear, and serviceable powder.*

South Carolina continued or reimposed this duty from time to time, and did not cease to collect it even without a law, as is shown by one or two indemnity acts clearing the powder receiver for collecting the tax after the law authorizing him to do so had expired.† None of the other colonies gave their reasons for imposing powder duties quite so clearly as did South Carolina, but several of them stated that the powder was wanted for harbor defence or kindred purposes. In some of the colonies, notably Massachusetts and New York, the tonnage tax was incorporated in the general duty acts, and affords no special points of interest.

All the tonnage duties were clearly for revenue, but they were so framed that the colonial shipping interest secured a good degree of protection. In fact, I believe there was no colony which did not exempt at least its own shipping from tonnage dues. The northern colonies all had reciprocity arrangements, by virtue of which the vessels of each entered the ports of the others free. The law of Massachusetts every year stated that English ships, and those of Pennsylvania, the Jerseys, New York, Connecticut, and Rhode Island, should enter free. Some of the other colonies made the exception in the same way, and others gave less extended privileges. English ships were subject to the tax at first, but the merchants complained so much that the colonists were commanded to make no distinction between British ships and their own.‡ Most of the colonies obeyed, but not willingly. They felt that the British merchants should pay a

* *Statutes of South Carolina*, ii. 20. † *Ibid.*, iii. 590.

‡ *Massachusetts Acts and Resolves*, ii. 158.

part of the expense incurred in defending and lighting the harbors, especially since they had a monopoly of the colonial trade. As it was, almost all ships which had a legal right to trade with the northern colonies were freed from the tonnage duties; and, if the navigation acts had been enforced, little revenue could have been received from this source. For Massachusetts, we have the figures to show how insignificant the tonnage tax became. From 1690 to 1719 the amount collected was quite regular, ranging from £200 to £300 per year, sometimes higher, sometimes lower, but with no great variations.* When the tax on British shipping and the duties on British goods had to be abandoned by command of the king in council, the revenue at once decreased more than one-half. The tonnage receipts even showed a decline from £622 in 1718 to £69 in 1719. So great a difference throws discredit upon the returns; but, comparing 1717 with 1722, we find a decline from £405 to £195, and till 1730 the tonnage duties only twice yielded more than £100 per year, nor were they ever of much importance after 1719. During the period of great depreciation and fluctuation of paper currency the duties were collected in powder. The greatest amount reported was 6,409 pounds of powder for 1737, while in many years less than 1,000 pounds were collected. Much irregularity is noticeable, and all evidence indicates that the tonnage tax had become an insignificant source of revenue in Massachusetts.

The returns for New York are less complete. Most of the annual reports do not distinguish between the duties from tonnage and those from other sources. There are a few figures, however, which throw some light on the subject. One report states that from 1714 to 1727 the tax on shipping amounted to £3,586, and from 1734 to 1753 it yielded £14,478,†— sums much greater than were collected in Massachusetts. During the French and Indian war the revenue from tonnage duties increased, reaching the highest point — £2,040 — in 1760.‡ This was either the year of greatest imports or the customs were collected more thoroughly; for they yielded £10,346,‡— a sum not reached again, although during

* *Massachusetts Archives*, 122 to 125. † *New York Journal*, ii. 424.

‡ *Ibid.*, ii. 643.

the whole course of the war the sums collected were greater than they had been before, and with its close a rapid decline occurred until less than £4,000 was collected in 1771 or 1772. The two separate returns of tonnage duties which I have found for years after 1765 show a much greater decline than do the customs. The sum given for 1768 was £150, and for 1769 only £138.* If these returns are correct, they indicate that the New York tax on shipping became as unimportant before the Revolution as that of Massachusetts. But such meagre returns are hardly sufficient to afford a basis for any inference.

For the other colonies, few and scattered returns of the revenue collected are available. The estimates of the number and tonnage of ships engaged in colonial commerce are by no m ans ample enough to enable us to calculate the probable receipts. The evidence obtainable indicates that the tonnage duties were more important in the earlier than in the later part of the colonial period, at least in the northern colonies. It also seems probable that the revenue collected from shipping in the southern colonies was greater than in the northern, because the former had few ships and the exemptions were not carried so far as in those colonies which had important shipping interests. The fact that the duties granted in Maryland and Virginia were permanent, and with the duties on tobacco furnished the greater part of the revenue, also lends color to this view.

II. In the export duty on tobacco, however, these two colonies had a much more important source of revenue than in the shipping tax. It was natural, of course, to raise a revenue from their most important commodity; and Maryland turned to this source almost from the beginning of her existence. A five per cent. duty† was proposed in 1638, but I find no record of its passage till 1639.‡ Ten years later the proprietor was granted a tax of 10*s.* per hundred weight on all tobacco shipped in Dutch vessels for any place except British ports.§

* *New York Journal*, iii. 21 and 28.

† Bacon's *Laws of Maryland*, 1638, Act XXXVI.

‡ *Maryland Archives*, i. 80.

§ Bacon's *Laws of Maryland*, 1649, Act IX.; 1676, Act II.

This was to continue for seven years, but it must have been re-enacted; for I find an account of its repeal in 1676.*. A little before this time a duty of 2*s.* per hogshead had been laid on all tobacco exported,—1*s.* for the proprietor's private use, and 1*s.* for the support of the colony.† The proprietor's shilling was made perpetual in 1704, and, according to Bancroft, yielded $7,000 in 1754.‡ Almost every new governor was granted a duty, usually about 1*s.* per hogshead, as his salary; and numerous additional duties were laid for supporting free schools, for building a state-house, for purchasing arms or ammunition, or for other colonial needs. There was a limit, however, beyond which the tobacco duties in Maryland could not well rise. The Virginia duty was never much above 2*s;* and, if more than this was required in Maryland, new settlers would be likely to go to Virginia. The alarm of the Assembly at too high a rate is shown by an act of 1717, which stated that the sum of the several duties was 3*s.* 9*d.*, that this was too high, and therefore repealed one duty of 3*d.*§

The duties in Virginia were not begun so early as in Maryland, nor did they rise so high. Indeed, after the tax had once been laid, there was some hesitation about retaining it and some vacillation about the course to be pursued. The tobacco duty was made necessary by the want of revenue and the difficulty of collecting a poll-tax, as is shown by the act imposing it, which states that "the present method of raising a revenue by poll is unequal and oppressive, and it will be easier and better to collect a duty: therefore, 2*s.* per hogshead shall be paid on all tobacco exported."‖ In the same year, 1658, a tax of 10*s.* was laid on all tobacco "raised by selling Dutch goods."¶ The ship-masters refused to pay the taxes; and seven of them were summoned before the Assembly for trial,** among them one Dutchman. The result of the trial is

* Bacon's *Laws of Maryland*, 1649, Act IX.; 1676, Act II.

† *Ibid.*, 1671, Act IX. ‡ Bancroft, ii. 396 (edition of 1882).

§ *Compleat Collection of the Laws of Maryland*, 1727, pp. 188.

‖ Hening, i. 491. ¶ *Ibid.*, 469.

**Although the act said Dutch goods, other foreigners had to pay the duty, as is shown by the explanation of the act, which is in the following words: "And this act is further explained, that for the custom of ten shillings per hogshead be as well understood of all foreigners as of the Dutch nation."

not stated, but the duty was repealed in 1659. The next year, however, the legislators had again concluded that tobacco must yield a revenue; for they say "that all nations find it prudent to collect revenue by duties rather than by taxes, that other nations gain by an imposition on Virginia's commodity (tobacco), that hitherto Virginia has gained nothing from this source, and a duty of 10*s.* per hogshead shall be imposed on all tobacco exported which is not taken directly to England." * Just how long the 10*s.* duty was continued is not shown by the statutes. If the navigation laws had been obeyed, it could not have yielded much revenue; but Virginia disregarded the trade restrictions, and for the 10*s.* revenue encouraged the Dutch commerce, as is shown by a law of 1660, which states that "the restriction of trade hath been disadvantageous and lowered the value of our only commodity,— tobacco." Therefore, "the Dutch, or any other European nation, shall trade with us freely, and have the same rights and privileges as English have, if they give bonds and pay the 10*s.* duty on tobacco; but, if they import negroes, the duty on tobacco obtained for negroes shall be only 2*s.* per hogshead." † Not only the Dutch, but all foreigners, even the other colonists, were compelled to pay the 10*s.* duty; and in 1665 complaint was made that it had driven the New England trade to Maryland. To recall the New England traders, they were allowed to carry out tobacco at the lower rate of 2*s.*‡ This is the last mention of the 10*s.* duty in the Virginia laws. With the decline of Dutch trade, it probably became too unimportant to merit a repeal, and so became obsolete.

The 2*s.* duty which was repealed in 1659 was reimposed in 1662,§ and until Virginia ceased to be a colony was one of her most important sources of revenue, being maintained at the same rate most of the time, though some additions were made for temporary purposes. A few scattered estimates of the sums yielded by the export tax on tobacco are to be found, enough to show that they were important and increasing in amount. In Maryland the 2*s.* tax for 1690 is reported to have yielded £2,221.‖

* Hening, i. 535.
† Hening's *Statutes of Virginia*, ii. 450; also see a note on page 513.
‡ *Ibid.*, ii. 218. § *Ibid.*, ii. 130. ‖ *Maryland Archives*, viii. 205.

Governor Berkley in 1671 reported the Virginia tobacco tax at £1,500.* In 1731 Dr. Oldmixon puts it at £3,200.† By 1750 it had reached about £5,000.‡ It probably did not rise much above this amount; for the highest estimate of the tobacco exported from both provinces before the Revolution is 100,000 hogsheads, which would yield the colonies a revenue of £10,000. Virginia probably got more than half of this, though several estimates place Maryland's production of tobacco almost as high as Virginia's.

Important as tobacco was to the colonists as a source of revenue, the amounts collected from it by them were nothing compared with what England drew from the same source. The duties collected from it there were £200,000 or £300,000 per year, and were much complained of by the planters. Dr. Oldmixon, in his *History of the British Empire in America*, says of the English tax on tobacco:§ "In 1685 a severe duty was laid on tobacco, which caused many thousand hogsheads to be sold for 12*d.* each rather than pay the customs and charges. This imposition is the original cause of all the straits and hindrances in trade and circumstances which the Virginians groaned under above fifty years. 'Tis amazing to consider that a commodity worth where it grows one-half penny a pound should have subsisted so long — above half a century — under the weight of an imposition more than ten times the value of the prime cost. This duty has raised above £20,000,000 since it was first imposed."

III. The tax on slaves imported was a considerable source of revenue to Virginia and Maryland, and still more to South Carolina; while in Massachusetts, New York, and Pennsylvania it was of less importance, both because they imported fewer slaves and because the duties were not very high. In fact, it seems probable that in Massachusetts, at least, the tax was laid to discourage importation rather than to raise revenue; for it was never incorporated in the general tariffs which were imposed from year to year, but was enacted for periods of five or ten years,— this never being done by Massachusetts with her revenue measures, after 1700. The rate was fixed at

* Chalmers's *Annals*, i. 328.
† *British Empire in America*, i. 438.
‡ *Dinwiddie Papers*, i. 386.
§ Oldmixon, i. 349.

£4 by the first act, passed in 1705, and was not changed subsequently.* The duty is last mentioned in 1738,† when it was continued for ten years. At the expiration of this period the importation may have been so small that it was thought useless to re-enact the duty.

In New York and Pennsylvania more slaves were imported, and the earlier duties were for revenue in both colonies. In the former, the tax of five ounces of silver per negro, first imposed in 1709, continued without change until the Revolution.‡ In the latter, changes and new duties were numerous during the first half of the eighteenth century; but, as only the titles of the earlier acts are given in the printed statutes, it is impossible to determine what the rates were prior to 1761. In that year they were evidently much increased; for several merchants petitioned against the duty of £10 taking effect at once, because they had ordered many slaves from the West Indies before it was passed. The petitioners further state that laborers are scarce and commodities high, and that their motive for engaging in the slave-trade was to encourage the industry and trade of the province.§ Their prayers seem to have been unheeded, and the law was not suspended, whether from the Quaker dislike of slavery or from the desire for revenue we cannot now determine.

Either the high duties or the changed conditions of the colony, or the growing antagonism to slavery, led to a steady decline in the number of slaves imported, as is shown by the amount of duty collected, which was £1,855 in 1762, £1,500 in 1763, and gradually decreased until it was only £100 ten years later.‖

Maryland and Virginia both imposed duties on slaves a little before 1700. Beginning with a ten shilling tax in Maryland, the duties increased gradually as new requirements called for additional revenue, and had risen to £4 or £5 by 1771. In that year an addition of £5 was made, possibly to discourage importation; for negroes were no longer scarce.¶

* *Massachusetts Acts and Resolves*, i. 578. † *Ibid.*, ii. 981.

‡ *Acts of the Assembly of New York*, 1718, 97.

§ *Pennsylvania Colonial Records*, viii. 576. ‖ *Pennsylvania Votes*, vi. 411.

¶ Bacon's *Laws of Maryland*, 1685, xxiv. *Laws of Maryland*, made since 1763, 1771, Act VII.

Virginia laid a duty of £1 each on all negroes imported during the first quarter of the eighteenth century, but this was abolished by the king in 1723. The next tax was an ad valorem duty of 5 per cent., to be paid by the purchaser. This rate continued from 1732 to 1740, when it was doubled; and during the next thirty-eight years the amounts collected ranged from 10 per cent. to 30 per cent., being most of the time at 20 per cent. After 1759 slaves imported from other colonies paid additional duties, 20 per cent. till 1772, then £5 per head. In 1778 Virginia prohibited the importation of slaves under a penalty of £1,000 on the importer, £500 on the purchaser, and the slave to go free.*

It is in South Carolina, however, that we find the greatest amount of revenue collected from slaves imported, both because greater numbers were brought in and because the duties were higher. The rates were fixed at 10*s.* in 1703, were soon raised to £10, and continued at that point save for a slight interruption about 1740, when the alarm caused by a negro insurrection and the fear that negroes were becoming too numerous caused a prohibitory duty of £50 to be imposed for a few years; but the rate was soon lowered to the old point.† The slave duties of South Carolina yielded two-thirds of the customs revenue collected in 1731, the figures being £8,500 from negroes and £4,000 from all other sources. ‡ For other years we have no returns, nor are the statistics showing the number of slaves imported, or the duties collected in any of the colonies except Pennsylvania, available.

Besides the revenue tariffs above described, most of the colonies imposed discriminating duties, generally double the regular rates, on negroes from other colonies. South Carolina required much more than double duties on negroes not coming direct from Africa. Two reasons were assigned for this. One was that slaves from other colonies were likely to be vicious and insubordinate fellows who had been transported for some crime, and would not only prove unruly themselves, but also corrupt the other slaves near them.§ The other reason is

* Hening, iii. 193, 229; iv. 317; v. 92; vii. 338; viii. 530; ix. 471.

† *South Carolina Statutes*, ii. 200; iii. 56, 562. ‡ *Ibid.*, iii. 340.

§ *Ibid.*, iii. 161.

clearly expressed by the preamble of a South Carolina act passed in 1722, which says,* "Whereas the importation of Spanish Indians, mustees, negroes, and mulattoes, may be of dangerous consequence by enticing the slaves belonging to this province to desert with them to the Spanish settlements near us, . . . all Spanish slaves imported shall pay a duty of £150."

IV. There yet remains for discussion the impost on wines, liquors, and other articles which were subject to indirect taxation. Each colony managed its tariff schedule in its own way, so that it is possible to make but few statements here which apply to all; and, therefore, I shall give a brief account of the legislation in the more important colonies.

In South Carolina the number of articles subject to duty was greatest, and an important part of the revenue was raised by imposts. Before 1700 a few acts were passed laying duties both on imports and exports; but with 1703 begins the tariff system, which was continued as long as South Carolina remained a colony. The act of that year is entitled "An act for the levying an imposition on furs, skins, liquors, and other goods and merchandise imported into and exported out of this province, for the raising of a fund of money towards defraying the public charges and expenses of this province, and paying the debts due for the expedition against St. Augustine." †

The first act was to be in force two years, but its subsequent continuations and re-enactments were generally for periods of three, five, or ten years.‡ The rates were raised and other articles were added to the list until, in 1721, more than fifty articles were taxed, and wine paid from £6 to £15 per pipe. After 1722 a few of the duties were reduced, and some articles were omitted from the list, so that in 1740 only about thirty

* *Statutes of South Carolina*, iii. 196.

† About thirty articles are taxed, of which the most important are wine at £3 to £5 per pipe, flour and biscuits at 2s. 6d. per hundred weight; sugar, 1s.; cocoa, 2s. 6d.; tobacco, 12s. 6d. per hundred weight; fish, 3 to 6s. per barrel; dyewoods, 5 to 10s. per ton. All other imports, 3 per cent. All furs exported were also subject to duty. *South Carolina Statutes*, ii. 200.

‡ The more important acts are found in *Statutes of South Carolina*, ii. 200 (1703), 649 (1716); iii. 27 (1717), 56 (1719), 193 (1722), 556 (1740), 739 (1751); iv. 150 (1761), 265 (1767).

imported commodities were subject to customs taxation. The ad valorem duties, which were first fixed at 3 per cent., were raised to 5 per cent. in 1716, then lowered to 1 per cent. in 1722, and were abolished in 1740. The wine duties, which, with the exception of those on slaves were the most important, averaged on Madeira £6 and on Fial [Fayal] £10 per pipe, and were not often changed. Besides the regular tariff, which was maintained without much change, South Carolina imposed several temporary duties, usually on sugar, molasses, or rum, to raise revenue for some special object.

Massachusetts laid duties on fewer articles and laid them at lower rates than South Carolina, but she was much more systematic in her tariff legislation. Beginning with 1645,* she maintained an impost on wines and liquors at rates ranging from £1 to £2 per pipe. For several years this duty was farmed, first at £120, afterwards at £165 per year.† Before 1692, however, a more modern plan was adopted. Other articles had been added to the tariff schedule, and a public collector was appointed. From this time on Massachusetts raised all her revenue by annual grants. She had either learned by experience the power this would give her over the royal officers or she copied after the English Parliament, which, with the accession of William and Mary, ceased to give the king subsidies for life.

Although Massachusetts re-enacted her tariff law every year from 1692 to 1774, yet she adhered closely to a low revenue rate. It is true that some advances in the nominal rates were made as the currency depreciated; but, when coin payment was resumed in 1737, the duties were at once lowered to one-third of the former scale. Tobacco duties may have been levied to restrict importation, for they were steadily increased and at times were very high. The wine duties were fixed in 1692 at rates ranging from £1 to £2 10*s.* per pipe, according to quality or place of growth. £3 per pipe was the highest rate ever imposed, and between 1765 and 1774 only 5*s.* was paid. Until 1735 the average rate was rather more than £1, and from that date till 1774 it averaged less than 10*s.* per pipe. The duties on a hogshead of rum were about the same

* *Massachusetts Records*, ii. 130. † *Ibid.*, 200, 289.

as those on a pipe of wine, which means that rum paid twice as much per gallon as did wine. Sugar was taxed 1*s.* per hogshead in 1692. This was raised to 2*s.* in 1695, at which point it remained until 1737, when coin payment was required, and the duty was again fixed at 1*s.* From this rate there was a steady decline until only 4*d.* per hogshead was collected in 1751, and at that rate the duty continued. Molasses paid about half as much per hogshead as sugar, and changes were made in the rates at the same periods. Logwood and other dyewoods paid 3*s.* per ton till 1737, then the duty was gradually reduced and finally abolished. Tea was first taxed in 1756 at 1*s.* per pound; but this was reduced to 4*d.* in 1762, and then dropped.

Besides the specific duties on wine, rum, tobacco, sugar, molasses, and dyewoods, ad valorem duties were imposed on all other imports at the rate of 1*d.* on twenty shillings' worth in 1692, increased to 2*d.* in 1731, to 4*d.* in 1739, and continued at that till 1774. English goods, however, were not subject to the duties after 1719. They had at first been taxed ½ per cent., afterwards raised to 1 per cent.; but the British merchants would not submit to even this low tax, and the colonists were compelled to remove all taxes on goods from England or on English ships.*

In New York the tariff legislation was quite similar to that in Massachusetts. There had, indeed, been heavy duties during the Dutch rule, but these were not imposed by colonists on themselves, and will not be treated here; nor will the rather high, arbitrary duties, which were imposed by Andros at the command of the Duke of York, receive attention. These, however, probably had an influence in accustoming the colonists to tariff taxes, so that, when they were allowed an assembly and permitted to make their own laws for raising revenue, they collected most of it by duties on imports and exports. The first act of which we have the text was passed in 1691, and laid moderate specific duties on a great number of arti-

*The tariff law of Massachusetts was either re-enacted or continued every year. The administrative provisions were much the same through the whole period, and by turning to any one act the whole system may be learned. I have, therefore, not referred by page to the Massachusetts acts.

cles.* Several other duties were imposed during the next twenty years; but the act of 1715,† which was continued without great change till 1775, taxed only a few imports. To avoid the fluctuations which the paper currency was subject to, the duties were made payable in silver at the following rates: wine, 7½ ounce per pipe; rum, 15 grains per gallon; cocoa, 1 ounce per hundred weight; all European goods imported from Boston, 12 ounces per £100 worth; from any other colonies, 18 ounces per £100 worth. I have found no reason for the favor shown Boston. Some years earlier the New York merchants had petitioned for tariffs discriminating against Boston.‡ Later acts make ad valorem rates 5 per cent., and show Boston no favor. This is the only instance I have found of an ad valorem duty of much importance allowed after 1720. After 1734 New York took the same precaution as Massachusetts to hold her rulers in check; and the duties, which were strictly for revenue, were granted for only one year at a time.§

The duties of the other colonies were hardly important enough to justify us in calling them tariff systems. It is true that from 1684 Virginia had a tax on liquors imported, most of the time at 4*d.* per gallon; and it was constantly maintained as a general revenue measure "to lessen other taxes," as one or two of the laws imposing it stated.‖ For more than fifty years the College of William and Mary was granted a tax of 1*d.* per gallon on all liquors imported, but these and the slave and tonnage duties were all that Virginia levied on imports.¶

Connecticut, Pennsylvania, Maryland, and North Carolina all taxed a few articles besides liquors; but the acts, in Maryland especially, were for temporary purposes or special objects rather than to raise a general revenue. Connecticut laws are not complete enough to show just what was done, but at times considerable tariffs were imposed. Pennsylvania, too, had

* *Journals of New York Assembly*, i. 8.

† *Acts of Assembly of New York*, 1691-1718, 204. ‡ *Journals*, i. 17.

§ See *Laws of New York*, 1691-1774, for the annual grants.

‖ Hening, iii. 23. ¶ *Ibid.*, iv. 148; v. 310; vii. 133.

rather high duties on liquors and lumber as early as 1688;* and liquor duties were imposed from time to time till 1722, after which trade seems to have been free till 1756, for in that year the duties proposed met with strong opposition. The minutes of the council say "that, at the second reading of the proposed bill, all were of the opinion that trade should be the last thing taxed; that exemption from duties and freedom of the port had more than anything else contributed to the increase of trade, and they were afraid this measure would divert it."† Some duties were finally imposed, but at low rates, and do not seem to have yielded much revenue.

So far as I have been able to learn, New Hampshire, Rhode Island, New Jersey, Delaware, and Georgia were without duties, except those on shipping, which have been already described. Were the duties collected? And were the sums realized from them large enough to pay a really important part of the colonial expenses? These are questions which, for most of the colonies, can have no satisfactory answer. The fact that the colonists were constantly evading the navigation acts, and made no pretence of paying the duties imposed by England, must have had a demoralizing effect, and taught them to evade duties imposed by their own law-makers. The increasing care which was taken to prevent fraud is strong evidence that the laws were not cheerfully obeyed. The small amount of revenue collected from a commerce of important extent is another evidence that the laws were not well enforced. For the years immediately preceding the Revolution the annual imports of New York were not less than £500,000.‡ The rate of duty was 5 per cent., but in no year were the duties much above £5,000, being only one-fifth of what they should have been.§ The revenue collected in Massachusetts was even less, averaging about £2,000 ‖ a year;

* *Votes of Pennsylvania*, i. 47.

† *Colonial Records of Pennsylvania*, viii. 30.

‡ *American Traveller*, 74, 75.

§ Governor Tryon's report, *Documentary History of New York*, 1579; also treasurer's annual reports in *New York Journal*, vol. iii.

‖ *Massachusetts Archives*, Treasury, 122-125.

but, as there was no ad valorem duty on English goods, we cannot make an accurate estimate of the amount of revenue to expect from imports. One piece of direct evidence of fraud is, however, afforded by the following entry in the treasurer's book for 1769:* "Received £133 6*s.* 8*d.* from an unknown hand, being so much he apprehended he ought to pay to the province for duties on rum and molasses he had run." How much had been "run" by persons with less tender consciences we have no means of knowing.

South Carolina collected much larger sums than her Northern sisters, as is shown by a few appropriation acts, and by a statement showing that £97,000 were realized from duties in 1772.† That, however, was above the average, because so many slaves were imported in that year. £97,000 is more than the annual direct tax of South Carolina yielded, but in ordinary years the direct tax was probably larger than the customs revenue. For Virginia and Maryland I think the indirect taxes were much more important than the direct, while for the Northern colonies direct taxes paid nearly all the expenses. In New York the duties were more important than in any other Northern colony, but averaged only about one-sixth of the total revenue. In the last decade of the seventeenth century they had yielded a much larger proportion. Indeed, there are a few statements to the effect that all, or nearly all, the colonial revenue was collected from commerce.‡ During the same period the duties of Massachusetts were also of much more importance than in later years. From 1690 to 1700, £3,000 to £5,000 § per annum was collected,— amounts which were never much exceeded; but the increase in trade, and the depreciated currency in which later duties were paid, must both be considered in determining the relative importance of the early duties. After 1719 the customs revenue of Massachusetts was not often above £2,000 sterling, and was frequently less,— amounts which are rather insignificant in

* *Massachusetts Archives*, Treasury, 125, p. 361.

† Anderson, *Historical Account of British Colonies*, London, 1775, p. 190.

‡ *Journals of New York Assembly*, i. 16.

§ *Massachusetts Archives*, 122.

comparison with the direct taxes, which ranged from £10,000 to £100,000 a year.

On the whole, it seems probable that the duties imposed in America before the Revolution were no more than imitations of the ordinary means which European countries used to obtain revenue; and I have not yet found any direct evidence that they influenced our later tariff legislation.

WILLIAM HILL.

NOTES AND MEMORANDA.

Some light is thrown upon the question as to the rate at which the subdivision of landed property has gone on in France of late years by M. de Foville, in an article published in the *Economiste Français* for September 24. In his well-known work, *Le Morcellement*, M. de Foville had concluded, in 1885, that the subdivision had reached its extreme, taking as a test the number of taxable properties. The figures now show that these properties (*cotes foncières*) reached their highest number in 1882, and from that time have been falling quite steadily. The movement may be seen from the figures which follow: —

	No. of Cotes.		*No. of Cotes.*
1871,	13,819,400	1885,	14,271,200
1875,	14,071,300	1888,	14,238,100
1879,	14,237,600	1891,	14,121,800
1882,	14,333,700		

From 1875 to 1882 the increase in the number of *cotes* slackened; and from 1882 the decrease has been regular, with the exception of one year. M. de Foville appears, then, to be justified in his conclusion that the "pulverization" of property, foretold by some, is not to be feared. An examination of the returns by departments is said to show that, where subdivision is still going on, it is either in departments, like those of central France, where the country has been backward and properties are still large on the average, or in the neighborhood of towns; and that in some parts of France, especially in the regions which have suffered from phylloxera, a certain aggregation of real property is in progress.

In the current issue of the *Vierteljahrschrift für Volkswirthschaft*, Mr. Theodor Buck gives an account of the striking accumulations of specie, or its equivalent, made by the Russian government in recent years. Mr. Buck gives the follow-

ing figures as to the specie at the command of the Treasury, and the amount of government notes outstanding, during the last five years. The figures indicate millions of rubles.

	Total specie.	*Total notes outstanding.*	*Proportion of specie to notes.*
About Jan. 1, 1888,	275.1	1046.3	26.3%
" " 1889,	304.8	"	29.1%
" " 1890,	376.3	"	35.9%
" " 1891,	475.3	"	45.4%
" " 1892,	524.3	1121.3	46.8%

The volume of notes outstanding remained stationary until the autumn of 1891, when the expenses called for by the crop failure and general distress led to an additional issue of seventy-five millions. Meanwhile the amount of available specie has grown steadily. Apparently, the government is feeling its way toward the resumption of specie payment; but the absence of all publicity in the conduct of government affairs makes it impossible to say with certainty what may be the object in view. Indeed, Mr. Buck had to pick up his figures from different sources, and was not always able to secure them for identical dates; though he believes them to be substantially accurate. Some indication as to the plans of the government is perhaps given by the fact that the Treasury is in the habit both of buying and of selling gold on the Petersburg Exchange, apparently with the purpose of preventing rapid fluctuations in the premium on paper. The immediate or early resumption of specie payments Mr. Buck believes to be out of the question.

The total of 524.3 millions of rubles of specie, set down as available at the end of 1891 or the beginning of 1892, was made up as follows: —

1. General and special funds in the Imperial Bank set aside for redeeming notes,	286.5
2. Specie deposited by the Imperial Treasury in the bank on current account,	32.3
3. Specie at the mint,	3.4
4. Specie reserve of the Imperial Bank,	60.3
5. Deposits of the Treasury abroad,	101.7
6. Deposits of the bank abroad,	40.0
Total,	524.2

A large part of the available specie, it will be seen, is not in hand, but consists of sums due to the Treasury or the Imperial Bank by foreign bankers: the total of these two items is not less than 141.7 million rubles. Of the 382.5 millions of specie in hand, a small part is silver; but the proportion is so small that the stock may be said to be practically all gold.

RETAIL PRICES UNDER THE McKINLEY ACT.

The first part of the Report of the Senate Committee on Finance, designed to throw light on the effects of tariff legislation, has been issued, and contains an examination of the course of money wages and of retail prices in the twenty-eight months from June, 1889, to September, 1891. As might have been expected, the general result, by whatever method measured, is that no marked change took place in prices or in wages. The range of prices for the first three months of the period was used as a base, indicated by the figure 100. The level for the month of September, 1891, the last month covered, was 99.36. The highest level attained was 101.46, in April, 1891. Similarly, money wages showed no appreciable change. The average for the same three months was again taken at 100; and the level for September, 1891, was found to be 100.75, while the variation was between the extremes of 99.41 and 100.78. The number of articles whose prices were examined was 214: the number of occupations from which wages were examined was 15. Both for wages and prices, figures were secured from 40 to 70 cities.

To the economist these figures are chiefly interesting as illustrating the slowness with which retail prices change. The wholesale prices of the same articles, of which an examination was also made, showed much greater changes. The general index number for wholesale prices rose as high as 104.25, against a rise of retail prices in the same month (April, 1891) to a maximum of only 101.46. Very striking discrepancies are found in the wholesale and retail prices of individual articles. Thus the wholesale price of butter varied between a minimum of 87.89 and a maximum of 158.51: the extremes of the retail

price were 99.27 and 124.67. In the general group of food products, wholesale prices rose to a level of 116.52 in May, 1891: retail prices in this group reached a maximum of only 107.

So far as the effects of tariff legislation are concerned, nothing is to be learned from the general figures. Of the 214 articles considered, few were directly affected by the changes in duties under the act of 1890. The prices of agricultural products naturally varied with the fluctuation in the general or local crops, and those of manufactured articles showed the general steadiness which might be expected. In some cases, it is true, the effects of changes in duties can be clearly followed. The remission of the duty on sugar was followed by a prompt fall in its price; and in this case the wholesale price was closely followed by the retail price. Tinware showed a distinct rise in price, presumably due to the higher duty on tin plates. Similarly, linens, worsted goods, overcoat woollens, carpets, showed advances which may be ascribed to higher duties. Other articles, like axes, screws, lead pipe, showed advances due to other causes. The general trend of the prices of manufactured articles was downward,—a result probably due to the ordinary causes leading to cheaper production and lower prices, intensified by the fact that the period from 1889 to 1891 was one of general depression.

Money wages showed no marked changes. Here, again, the fifteen occupations selected were, in the main, such as the tariff act of 1890 could not directly affect. On grounds of general reasoning, it might perhaps be expected that in some particular industries higher duties would lead for a while to unusually large profits, and so make possible a rise in money wages,—both advances being of a sort not likely to endure. Possibly some effect of this kind may be seen in a rise in the wages of persons engaged in the manufacture of woollen goods in the course of 1891. But, after all, the bulk of the woollen manufacture of the United States was not affected by the advances of duty in the new tariff act; and the change noted is not improbably due to other causes.

In truth, the whole investigation rested on a palpable error in regard to the operation of tariff legislation. The political

importance of protection leads to curious notions as to its economic effects. In one quarter we are told to expect an immediate rise in general wages from the tariff act of 1890: in another quarter we are told to expect a rise in all prices. In fact, the number of articles directly affected by the tariff act of 1890 was small in comparison with the total consumption of the community. That act is important from the principle involved in it, and from the character of some of its details, rather than from its measurable effects on general welfare. It was to be expected that such an investigation as the Senate Committee undertook would lead to negative results; but we fear it is hardly to be expected that this outcome will lead to a more sensible and pertinent mode of discussing the tariff question.

There is another point of view, however, from which this report is of very considerable importance,— as to the method in which the investigation was carried on. The collection of the figures of prices and wages which formed the basis of the investigation was entrusted to Commissioner Carroll D. Wright of the Department of Labor, while the work of digesting and analyzing them was entrusted to Professor R. P. Falkner, of the University of Pennsylvania. That these gentlemen were put in charge is gratifying evidence that the need of expert training in such matters begins to be appreciated by the public and by legislators. Both carried out the tasks imposed on them with a success highly creditable to the development of statistical skill in the United States,— a development which is only a part of the general advance in economic training so conspicuous in the intellectual history of the last ten years. No better example of skill and care in statistical work can be found than in Professor Falkner's analysis and condensation of the figures supplied by Commissioner Wright.

It is of special interest to the economist that Professor Falkner not only worked out the index number for each article and group of articles during every one of the twenty-eight months, and calculated the simple average, or general index number, for all the articles and groups: he also worked out a general index number in which allowance was made for the varying importance of the different articles. The

degree of importance to be ascribed to one commodity as compared with another was ascertained by examining the proportion in which different commodities entered into the consumption of an average family,—this, again, being ascertained from budgets of normal families, having average incomes, which had been gathered by the Commissioner of Labor in his recent reports on cost of production. Data of this sort made it possible to weight articles, in the calculation of the general index number, in proportion to their importance for the bulk of the community. Corrected in this way, the average of prices in September, 1891, as compared with the beginning of the period in 1889, was 99.56; in other words, the cost of living for an average family went down from 100 to 99.56. This result differs very little from that obtained by taking a simple average, without regard to the importance of commodities; for it will be remembered that by the method of simple average the change in the general level of prices was found to be from 100 to 99.36. The result confirms the conclusion to which other investigations of the same sort point,—that the method of weighted average is not greatly superior for practical purposes to that of simple average. In principle, it is clearly the sounder method; but in practice the two seem to lead to the same results.

This, however, is a point on which further light is needed; and it is to be hoped that the skill and care which mark this investigation will be applied in due time to material covering a longer period and possessing greater intrinsic importance. Such material, it may be hoped, will be gathered and sifted for the second part of the Report of the Senate Committee, in which the range of wholesale prices during the last fifty years will be considered. This second part, we are informed, is likely to be issued in the course of the autumn or early winter. It cannot fail to be of great interest and value.

RECENT PUBLICATIONS UPON ECONOMICS.

[Chiefly published or announced since July, 1892.]

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